

## **JUDGMENT CASE NO. 21**

### **LILIANA D. VENDEUVRE vs. IDB**

The Inter-American Development Bank Administrative Tribunal,

Composed of Dr. Agustín Gordillo, President, Hon. Kenneth G. Smith, Vice President, Dr. Ildélio Martins, Dr. Alfredo Martínez-Moreno, Dr. Baltasar Cavazos-Flores, Hon. Thomas Buergenthal, and Hon. Luzius Wildhaber, considered the case following the procedures established in Articles 20, 21, 22 and 23 of the Rules of the Tribunal.

Complainant was represented by her attorney, Dr. Ovidio Martínez. The Bank was represented by Bernadete Buchsbaum, Esq., of counsel. In addition to the written submissions the Tribunal heard oral arguments on 3 May 1989.

#### **WHEREAS:**

1. On 27 July 1988, Miss Liliana D. Vendevre, a Paraguayan national, who is a staff member of the Inter-American Development Bank and holds a Bachelor of Science Degree in Business Administration, filed a complaint with this Administrative Tribunal petitioning for:

A. Reversal of the decision of the Deputy Manager of the Human Resources Administration Division (HUR) dated 6 November 1986 and that of the Manager of the Administrative Department (DPA) dated 23 December 1986, by which Bank Management turned down Complainant's request to be compensated for the professional duties she performed from 16 April 1980 to 1 August 1986, professional duties which were assigned to her as regular and permanent duties in position #0584.

B. That the Tribunal holds that Complainant performed duties of a professional nature that would correspond to Grade VII or Grade IX positions according to the Bank's classification.

C. Payment by the Bank to Complainant of a cash amount equivalent to 15 percent of the salary she received in the period 16 April 1980 - 1 August 1986.

D. That the Tribunal holds that said amount be part of her regular remuneration for purposes of the Staff Retirement Plan.

E. Payment by the Bank to Complainant of the interest that the sums described in paragraph C above would have earned, calculated at the average interest rate paid on savings accounts at the IDB Credit Union, as well as the interest that would have accrued in the Retirement Plan, and other losses.

F. Payment by the Bank, as damages, of thirty five thousand dollars (US\$ 35,000.00) in cash.

2. The events described by Complainant in support of her claims may be summarized as follows:

A. On 17 August 1979 the Bank hired Complainant temporarily to fill a secretarial position with secretarial duties. On 1 January 1981 the Bank made Complainant a permanent employee as provided for in Personnel Policy No. 311, with the same position and secretarial duties originally assigned to her.

B. On 16 April 1980 Management transferred Complainant to position #0584, then vacant in the Field Offices Accounts and Technical Cooperation Section of the Budget and Management Accounting Division (BMA/FTC) which, according to the Job Description, involved administrative and professional tasks even though it wasn't of secretarial category.

The duties assigned to position #0584 required the use of specific accounting knowledge to deal with financial and accounting transactions in accordance with IDB's Chart of Accounts. In part, the job involved the preparation of vouchers for the transfer of funds, cancellations of accruals and reimbursement or transfers of funds. In addition, it required the ability to draft correspondence and knowledge of the disbursement process being dealt with, for part of it involved the writing of letters to advise beneficiaries of the manner in which transfers of funds were being processed and how those funds were being posted (deductions and amortization, reconciliation, funding, replenishment or balance to be reconciled in revolving funds). Lastly, it also involved writing internal correspondence of the unit and helping the immediate supervisor, Mr. Gerónimo Benítez, with various writing tasks and other duties.

The job description of position #0584 was last revised in May 1976. In it already 50 percent of the time was being assigned to professional duties. However, the increase in technical cooperation programs, the assignment of several funds to these programs and the change in the system for processing technical cooperation disbursements that were non-refundable or subject to contingent refund, set up in June 1981 in order to speed up disbursements, affected the distribution of work. As a result, the share of time devoted to professional duties was much larger than provided for in the Job Description of position #0584 in effect since 1976.

The professional duties assigned to position #0584 are normally tasks which correspond to positions classified at two other Grades, thus:

(i) In BMA, the preparation of vouchers dealing with financial and accounting transactions is the responsibility of professionals in Grade IX and higher. In the Technical Cooperation Accounts Unit this task, as well as the preparation of other internal vouchers is in the hands of Grade VII professionals. Their job descriptions assign a large share of their time to these tasks. Internal vouchers are also prepared by Grade X accounting assistants and sporadically by other accounting assistants of a lower grade.

(ii) The drafting of letters and other correspondence in BMA, and throughout the Bank, is the responsibility of unit supervisors and other professionals and chiefs of a higher grade. Only in the Technical Cooperation Accounts Unit of BMA was this work the permanent responsibility of the "Secretary", because it was directly related to the preparation of vouchers that she drew up as well.

(iii) For seven and a half years, permanently and not temporarily, Complainant performed professional duties. Besides, she substituted for the

Grade X Accounting Assistant when the latter was absent. The Grade X Accounting Assistant does not do secretarial work.

C. On 17 July 1984 Complainant asked for a review of the Job Description of position #0584 and for its comparison with similar positions within the Bank and with the Assistant positions within the Division, with a view to a change in classification.

The Salary Administration Section made a very brief review of position #0584, that lasted no more than 20 minutes, from which it was concluded, according to the memorandum of 20 September 1984 addressed by Mr. Nelson Ocampo, Chief of the Salary Section, to Mr. Charles T. Brannan, that "... the secretarial/administrative duties of the position under review account for approximately 48 percent of the time." On 23 October 1984 Complainant requested reconsideration of the case.

On 1 November 1984 Mr. J. M. Corredor, Chief of the Compensation and Benefits Division, advised Mr. José Epstein, Administrative Manager, that if position #0584 were to be taken to the Position Evaluation Committee (CEC) "... the assigned grade probably would be lower than X." (In the Bank "I" is the highest position while "XV" is the lowest). Nevertheless, the job description for position #0584 was not brought before CEC.

D. On 14 February 1985 Complainant asked HUR for compensation for her non-secretarial duties. On 21 February 1985, the Salary Administration Section (HUR/SAL) replied that the request did not meet the requirements of Personnel Policy No. 336. It also indicated that "... if the job description undergoing analysis does not adequately reflect the duties and responsibilities, HUR/SAL would be willing to make another study, to which end the supervisors must concur that the description does not adequately reflect the duties." On 14 February 1985 Complainant was apprised of a new job description by Mr. José Levy.

On 15 April 1985 Complainant asked her immediate supervisor, Mr. Benítez for a review of the duties of position #0584. On 22 April 1985 Mr. Benítez advised Complainant that HUR had been asked for a desk audit that would be later sent to CEC. On 29 April 1985 BMA for the first time asked HUR to send the position to CEC.

On 31 May 1985 Mr. Ricardo Blanco, of HUR/SAL, made a second attempt at a desk audit of the position, which he did not complete. This time, Mr. Blanco asked Complainant for examples of some of the tasks she carried out. Complainant delivered the information on 6 June 1985. On 25 June 1985 Mr. J. Ballivián advised Complainant that Mr. Blanco had prepared a new job description and asked her to sign it. Complainant did not sign it because the description did not reflect her actual duties and responsibilities.

E. On 9 July 1985 Complainant asked HUR to update and to submit to CEC the job description for position #0584. She also requested to be compensated for her professional work, and to be assigned to a position with responsibilities consistent with her professional training and experience. On 29 July 1985 HUR again turned down her request.

On 14 August 1985 Complainant delivered to Mr. Luis Sánchez Masi, HUR Deputy Manager, a statistical study of her work and a comparison with the work being performed by the two Grade VII officers after she ceased to prepare vouchers and to draft

correspondence. On 30 August 1985 Mr. Corredor decided that the information in the statistical study did not warrant changing the time distribution in the job description.

On 9 September 1985 Mr. Levy, Deputy Chief of BMA, apprised Complainant of yet another job description for her review, signature and subsequent submittal to CEC.

On 13 September 1985 Complainant returned the job description unsigned to Mr. Levy, because the changes made reflected neither her duties nor the facts. In addition, since the Division Chief, Mr. Brannan, had told her that she would be transferred to another position, Complainant requested her CEC review be dropped.

On 18 September 1985 BMA decided, irrespective of her latest request, to take the job description to CEC. Nevertheless, in the end, the description was not submitted to CEC and Complainant was not transferred.

F. On 27 September 1985, in line with Policy No. 326 of the Personnel Policies Manual, Complainant again requested compensation for the professional work performed, and the official assignment of responsibilities.

On 10 October 1985 Mr. Corredor offered Complainant a transfer and a bonus. Complainant did not accept because the only fair thing to do would have been to pay her for the professional work performed and for that compensation to have all applicable benefits, particularly those which regard her own, as well as the Bank's, contributions to the Retirement Plan.

G. On 28 October 1985 Mr. Brannan gave Complainant a job description for her review, signature and subsequent submittal to CEC. He also indicated that he would not submit it as long as he were not fully certain of the differences between Complainant and her supervisors. In response to Mr. Brannan's request, Complainant prepared two detailed descriptions of duties, one indicating everything she had done previously—because by this time her supervisor was giving her professional work only sporadically—and another showing what she did when her supervisor did not give her professional work.

H. On 18 April 1986 Mr. Levy informed Complainant that she would be transferred to the Budget Section together with her position #0584. At this, Complainant asked whether the job description would be changed, to which Mr. Levy replied that it could not be done.

Instead, on 5 August 1986 Mr. Brannan advised Complainant that HUR had decided to transfer her to the Accounts Section of the Travel Unit, to fill position #0583, Accounting Assistant, Grade XII.

I. On 22 October 1986 Complainant asked HUR to compensate her for the professional work performed, in line with the procedures prescribed by Personnel Policy No. 326 (formalities for access to the Conciliation Committee). Mr. Carlo Binetti, Chief of the Employment and Development Division, turned down her request on 6 November 1986.

On 21 November 1986 Complainant appealed to the Manager of DPA. Mr. Sánchez Masi also denied the request on 23 December 1986.

J. On 8 May 1987 Complainant filed with the Conciliation Committee the application provided for in Personnel Policy No. 326. Having processed the application, the Committee decided as follows in its preliminary recommendations: "... Conclusions: ... 1. Regarding the mixed nature of the secretarial/administrative duties performed by Complainant, Bank management basically accepted the facts put forward by Complainant. The parties differed, however, as to the fraction of working time devoted to one and the other duties and as to the essence of the work carried out by Complainant (secretarial/administrative or professional) ... 6. Bearing in mind that there was a significant chance that Complainant might have secured a higher grade if her position #0584 had been sent to CEC, and considering the paragraph on Special Actions, page 6, of Personnel Policy No. 333... RESOLVES: ... to recommend to the parties that they conciliate their differences by means of a supplementary payment from Management to Complainant in an amount equivalent to 15 percent of her basic salary for the period ranging from 16 April 1980 to 12 January 1987 and that this compensation be part of her regular remuneration in computing other benefits such as overtime and the Staff Retirement Plan, among others."

K. On 15 March 1988 HUR Deputy Manager declined to follow the recommendation of the Conciliation Committee.

On 16 March 1988 the Conciliation Committee held a meeting attended by the parties. The record of the meeting shows, at the request of the Chairman of the Conciliation Committee, that the Committee was persuaded that the work performed by Complainant was at least above and beyond merely secretarial duties.

3. The Complainant bases her petition on the following legal principles:

A. Personnel Policy No. 332 on Secretarial Positions provides that these are positions which have similar duties and conditions of performance in terms of providing secretarial services throughout the Bank. These duties must entail more than 50 percent of the time of the incumbent, and secretaries do not have a job description. Consequently, position #0584 does not fit this definition as set out in the Personnel Policies Manual.

B. Personnel Policy No. 311 on Employee Categories, Section B, states that professionals are employees who apply special knowledge in certain fields, whether in the technical, administrative or supervisory levels, as warranted by the responsibilities of their jobs. Bank management had Complainant perform duties of a professional nature by calling on her to apply specific knowledge within the area of accounting and financial resource management at a technical and administrative level.

C. Personnel Policy No. 330 on Classification and Remuneration provides that "salary ranges reflect the relative importance of each position ..." and "the salary assigned to each person, as well as the rules and procedures used to assign such salary must reflect the needs of the Bank with respect to the various types of occupational skills ..." This policy is based on the general principle of law that an employee's remuneration must reflect the nature and quality of his work and his occupational skills, and that there must be equal pay for equal work. Both principles impose on the Bank the duty to refrain from discriminating in remuneration.

D. Personnel Policy No. 336 prescribes the rules governing payment for temporary performance of functions in a position with higher grade, specifically as regards

permanent employees in Grades XV to X. This provision is based on the general principle that imposes on the Bank the duty to compensate for greater responsibilities assigned to the employee, that amount to new stipulations in the employment contract. Complainant performed professional duties at Grade VII for most of the time and on a permanent basis.

4. The Bank answered the complaint and asked the Tribunal to dismiss each and every one of the claims put forward by Complainant.

5. The Bank, in support of its petitions, described the facts as follows:

A. Complainant was hired by the Bank on 17 August 1979 as a temporary employee to fill a secretarial position. She was assigned to BMA/FTC in the Administrative Department.

B. On 16 April 1980, Complainant, who was still under a temporary contract, was assigned to position #0584, which was vacant in BMA/FTC. The duties assigned to position #0584, as shown on the job description prepared for the internal use of BMA/FTC included general secretarial duties such as typing, shorthand, filing, updating of files and the exchange of information with other divisions within the Bank, as well as administrative support duties relative to the preparation of vouchers for disbursement of funds for Technical Cooperation Projects and the writing of letters of advice to the beneficiaries of those projects.

C. On 19 December 1980 Complainant accepted a permanent appointment within the Bank as of 1 January 1981. The title of the position, according to the terms of the Letter of Appointment, was "Secretary" and she acknowledges in the complaint that she continued to perform "the same secretarial duties previously assigned to her."

D. On 29 May 1981, Complainant, who at the time had a Grade XIII, for the first time took a secretarial test to earn a promotion to a higher grade, but was unsuccessful. Three years later, on 25 May 1984 Complainant passed her secretarial test and was promoted to Grade XII.

E. Only as late as 1984 did Complainant question her job description, that is, more than four years after being appointed to position #0584. On 17 July 1984 she asked Mr. Charles Brannan, then Chief of the Budget and Management Accounting Division (BMA) that her job description be reviewed and compared with other similar positions within the Bank and with Accounting Assistant positions within the Division.

F. On 10 August 1984 Mr. Brannan advised Complainant that BMA would grant her request and would ask for a desk audit of position #0584 to establish whether her duties were typically secretarial or could be better described as those of an Accounting Assistant. Mr. Brannan requested the desk audit on 16 August 1984.

G. On 20 September 1984 Mr. Nelson Ocampo, then Chief of the Compensation and Benefits Division, advised Mr. Brannan that as a result of the outcome of the desk audit, position #0584 should remain classified as a secretarial position. On 25 September 1984 Mr. Brannan conveyed the results of the audit to Complainant.

H. On 23 October 1984 Complainant wrote Mr. Brannan expressing her dissatisfaction with the outcome of the desk audit and insisting that position #0584

should be classified as an Accounting Assistant post. Between 31 October 1984 and 14 January 1985 several divisions of the Administrative Department exchanged memoranda on the classification of the position #0584 and, in view of the nature of the duties and the time devoted to each of them, decided to confirm the outcome of the desk audit.

I. On 14 January 1985 Mr. José Levy, Deputy Chief of the Budget and Management Accounting Division, reiterated to Complainant the specific duties she was to perform, which were the same as those she had been carrying out since her original appointment to position #0584. However, to avoid any future confrontation with Complainant her supervisors decided to assign to other employees in the section the preparation of vouchers and the writing of letters of advice.

J. On 21 February 1985, Mr. Ricardo Blanco informed Complainant that in order to proceed to review the duties assigned to position #0584, she and her supervisor had to agree on a job description. Complainant did not reply, but on 18 March 1985 she wrote to Mr. Ballivián repeating her request for a comparison between position #0584 and those of Accounting Assistants within BMA/FTC. On 26 March 1985 Mr. Ballivián indicated that position #0584 would remain classified as secretarial.

K. On 15 April 1985 Complainant asked her supervisor, Mr. Benítez, to send the job description of position #0584 to CEC, under Personnel Policy No. 326, for evaluation. In response to this request, on 22 April 1985 Mr. Benítez advised Complainant that a revised and preliminary version of her job description would be sent to the Salary Administration Section for further analysis.

L. On 29 April 1985 Mr. Brannan sent to the Salary Administration Section the revised and preliminary version of the job description, stressing that this fresh request was prompted by Complainant's insistence. Mr. Ricardo Blanco met with Complainant on 31 May 1985 in order to audit again position #0584, but he could not reach an agreement with Complainant concerning the new job description. Mr. Blanco, nevertheless, prepared a new preliminary job description that was given to Complainant on 25 June 1985.

M. In the meantime, Mr. José Levy offered Complainant a transfer to the Administrative Services Division. Complainant declined. On 7 June 1985 Mr. José Levy wrote to Complainant confirming once again the duties she was to carry out in position #0584, which were essentially the same as those set out in the original job description. On 11 June 1985 Complainant advised Mr. Benítez that she would continue to pursue the remedies provided for in Personnel Policy No. 326.

N. On 9 July 1985, in line with Personnel Policy No. 326, Complainant wrote to Mr. Sánchez Masi, HUR Deputy Manager, requesting payment for professional services rendered to that date and the evaluation of position #0584 by CEC. It was in that communication that she argued for the first time that some of the duties she performed were professional in nature. On 29 July 1985 Mr. Sánchez Masi rejected the request because the secretarial nature of position #0584 had already been ascertained at every managerial level.

O. On 5 August 1985 Complainant informed Mr. José Levy that she had just obtained her Bachelor of Science Degree from American University. Soon after, on 14 August 1985, she again requested amendment of the job description of position #0584,

its evaluation by the Position Evaluation Committee and its comparison with position #0926, Accounting Assistant in BMA/FTC.

P. To gain once and for all a complete understanding of Complainant's thinking regarding her own duties, on 28 October 1985 Mr. Brannan asked her to write her own job description. Complainant responded with two documents. The first described the duties allegedly performed prior to January 1985 and the second those discharged after that date. Neither of these documents departed significantly from the original job description.

Q. From January to August 1986, Complainant, while still working as a secretary assigned to position #0584, performed several temporary duties within the Budget and Management Accounting Division under the supervision of various persons, seldom preparing vouchers or correspondence. In May 1986, Complainant took secretarial test to win promotion from Grade XII to Grade XI, but was unsuccessful.

R. On 1 August 1986 Complainant was transferred to position #0583, with the title of Accounting Assistant, in the Accounts Section of the Budget and Management Accounting Division (BMA/ACC). On 5 August 1986, dissatisfied with her transfer to position #0583 in BMA/ACC, Complainant asked Mr. Brannan to be immediately returned to position #0584 in BMA/FTC. On 7 August 1986 Mr. Brannan got in touch with Mr. Sánchez Masi to confirm the transfer of Complainant to position #0583, the secretarial nature of her duties while filling position #0584, and the fact that Complainant remained dissatisfied.

S. Complainant did not insist on her return to position #0584. Instead, on 22 October 1986 she again cited the provisions of Personnel Policy No. 326 and wrote to Mr. Nelson Ocampo, the new HUR Deputy Manager, requesting compensation for the professional services allegedly rendered between April 1984 and January 1985. On 6 November 1986 Mr. Carlo Binetti, Acting HUR Deputy Manager, replied by memorandum of 22 October 1986 turning down her request.

T. On 21 November 1986 Complainant submitted to the Administrative Manager, Mr. Sánchez Masi, her claim to be compensated for professional work performed in position #0584. On 23 December 1986 Mr. Sánchez Masi rejected Complainant's claim on the grounds that the case had already been reviewed at all relevant managerial levels, which had confirmed the secretarial nature of her work.

U. On 8 May 1987 Complainant brought her claim for "supplementary payment for performance of higher-Grade functions" to the Conciliation Committee, and on 15 March 1988 Mr. Weston Williams, HUR Deputy Manager, responded to the preliminary recommendations of the Conciliation Committee by restating Management's view that the duties performed by Complainant while in position #0584 were not professional but secretarial. Consequently, there was no conciliation of the parties based on the recommendations put forward by the Conciliation Committee, and on 27 July 1988 Complainant filed this case with the Tribunal.

6. The Bank bases its petitions on the following grounds:

A. Complainant argues the incorrect classification of position #0584 but seeks a change in the category of the position.



The Bank draws a distinction between the category of positions and the classification of positions. Personnel Policy No. 311 provides for the following categories of positions: permanent and temporary, according to the duration of appointment, and executive, professional and administrative, depending on the level of functions to be performed.

Position classification, on the other hand, deals with the distribution of the various categories of employees among positions and grades. According to the definition in Personnel Policy No. 332, position is: "The aggregate of responsibilities, duties, authority and conditions of performance defined within a specific unit of work." Under the system, an undetermined number of employees of the same category may fill different positions on different grade levels (for instance, secretaries and administrative assistants fall within the administrative category).

In view of the nature of the duties performed by Complainant, the dispute in this case may revolve only around the correct classification of her position (in other words, secretary or accounting assistant) and not around her category (that is to say, administrative or professional). Consequently, the Bank had been reviewing Complainant's job description based on her original request that position #0584, which was secretarial and therefore within the administrative category, should be compared with accounting assistant positions, which are also administrative.

B. The nature of the duties assigned to position #0584 were purely secretarial and administrative.

To analyze differences between administrative and professional categories the Bank takes into account separate factors. Of these, the most important are: responsibility, creativity or originality and discretion.

The responsibility factor is important in evaluating positions and in determining the grade within the salary scale, as prescribed by Personnel Policy No. 332: "The comparison of each position with others will be made in terms of overall knowledge required, complexity of duties and responsibilities, and accountability for results as reflected in the approved job description."

Creativity is the ability to produce by using the imagination. Creativity and originality are the opposite of imitation and copying. If the duties performed are mechanical or repetitive and do not entail difficulties or problem-solving, in other words, if they lack originality or creativity, the complexity factor must be rated at a lower level, with the ensuing effect on the classification of the position.

Discretion, or the ability to use one's own judgment to determine priorities, select information and arrive at conclusions, is also an important factor to be considered in determining the category or classification of each position.

The duties that, according to Complainant, were professional in nature and took up such a share of her time as to justify a change in the category of the position from administrative to professional were two, namely, the preparation of vouchers for disbursement of funds connected with Technical Cooperation Projects, and the writing of letters of advice to the beneficiaries of Technical Cooperation Projects.

The Bank has never denied that these duties might be regarded as administrative in nature rather than typically secretarial. However, in the exercise of its discretion to organize itself and distribute the work, the Bank classified position #0584 as secretarial because the typically secretarial duties were greater in number than the administrative duties. On 20 September 1984 Mr. Ocampo stated he found the secretarial or administrative duties of the position to account for 48 percent of the working time, so that the Division could not grant Complainant's request to classify the position as that of an Accounting Assistant. This does not mean that Complainant devoted 52 percent of the time to professional activities, only that such amount of time was not devoted to typically secretarial activities.

The preparation of vouchers, which Complainant regards as a professional task, is an administrative activity routinely carried out in BMA/FTC. BMA/FTC receives disbursement request from field offices or from other units within the Bank that deal with Technical Cooperation Projects, in a standard Form 83. The Accounting Officers in BMA/FTC, who are professional employees, audit the disbursement request to make sure it is valid. Once the disbursement request has been approved by an Accounting Officer, he registers it in the project file which, together with Form 83 and all other documents, goes to the secretarial or administrative staff member responsible for preparing the voucher. Preparation of the voucher involves copying from the disbursement request to the voucher Form the name of the beneficiary, the name and address of the beneficiary's Bank, the name of the account to which payment will be made, and other miscellaneous information. Whoever prepares the voucher also copies from the Bank's Chart of Accounts the code numbers for the accounts involved in the transaction. Once the voucher is ready, it is reviewed and validated by the Accounting Officer to make sure that the information it contains is accurate, and it is then sent to the Supervisor for final approval.

Thus, the information set out in the vouchers is not the product of creativity of whoever prepares it but only a copy of existing material. In addition, whoever prepares the voucher does not select the data to be copied to the voucher. Lastly, should any mistake be made in preparing the final document, either the Accounting Officers or the Section Chief, and not the person who prepared the voucher, will be responsible.

Likewise, the letters cited by Complainant as evidence of the professional nature of her duties are either copies of models or a compilation of existing information. Their texts are repetitive and require no improvement whatever in wording. Letters of advice, as well as vouchers, were signed, reviewed and approved by the Section's professional staff members who assumed final responsibility for their content.

It is obvious from these facts that the duties performed by Complainant in position #0584 lack the necessary responsibility, creativity or originality and discretion to be professional in nature. Position #0584 entailed only the performance of purely secretarial and administrative support duties.

C. The nature of the duties and not the category of the person performing them determines whether the duties are administrative or professional.

In support of her allegation that preparation of vouchers and the drafting of letters of advice provided for in the job description of position #0584 were professional duties, Complainant adduced that such tasks are also carried out by professionals in Grades VII and IX within BMA/FTC, as required by their job descriptions. However, neither in the

1976 nor in the 1985 job descriptions of BMA accountants in Grade VII and IX is the preparation of vouchers listed among their duties.

The Bank does not deny that these professionals prepared and continue to prepare vouchers, especially in times of heavy workload, even though their job descriptions do not require it. They do so to complete the work assigned to the Section. The fact that professional employees may perform a particular task does not change the nature of the activity. Professional employees frequently do administrative work when secretaries or other administrative staff are absent or busy with other work, or when pressure leads to shortcomings in the administrative support system.

In sum, it is the nature of the duties performed and not the category of the position that determines whether those duties are professional or administrative.

D. The Bank has no obligation to bring the job description for position #0584 before CEC.

According to Personnel Policy No. 332, the Position Evaluation Committee was established "to determine the relative value of a position in comparison with others in the Bank." Since all secretarial positions within the Bank have the same generic job description, grades may not be distributed among them by using comparative criteria and, consequently, it is not necessary to bring them before CEC. Personnel Policy No. 336 states that the grades for these (secretarial) positions are assigned on the basis of the knowledge, skills and abilities of the incumbent and not in the basis of fixed duties assigned to the position.

When the Bank, at the request of Complainant, considered the possibility of taking the job description of position No 0584 to CEC, it did so as a good will gesture, to dispel any doubts about the classification of the position and not because Complainant was entitled to an official job description of her secretarial position.

To present Complainant's case to CEC it was necessary to submit the job description prepared by the department to which she belonged, that is to say, the Administrative Department, and a reasoned request for an evaluation of the position. As a job description was never completed because Complainant rejected every text proposed, it was never possible to lay the matter before CEC.

E. Complainant is not entitled to receive compensatory pay for duties performed, either temporarily or permanently, in a position of a higher grade.

Both, Complainant and the Bank agree, although for different reasons, that the provisions of Personnel Policy No. 336 "payment for temporary performance of functions in positions with a higher Grade" do not apply to this case. It is necessary to consider the application of Personnel Policy No. 336 because the recommendations made by the Conciliation Committee were based on the assumption that Personnel Policy No. 336 did apply to this case and because Complainant uses the figures of 15 percent set by Personnel Policy No. 336 as the basis for computing the additional compensation she claims.

Complainant's argument is that the alleged professional duties were permanent and not temporary. The Bank, for its part, takes the view that Personnel Policy No. 336 does not apply to this case because, even if Complainant had performed professional

duties temporarily, such performance would not have met the other requirements set by the policy for additional compensation.

The facts do not bear out Complainant's claim that she performed professional work on a permanent basis. One of the various contradictions found in the complaint is the very fact that it claims, at one and the same time, to have performed professional duties permanently and temporarily. On the one hand, it contends that professional services were performed permanently for 7-1/2 years, but on the other, it claims additional compensation only for a period of approximately 6 years (16 April 1980 to 1 August 1986). It states, moreover, that claimant ceased to prepare vouchers and draft letters of advice in January 1985, even though these are the very duties that determined the alleged professional nature of her position.

The Bank's view is that Personnel Policy No. 336 would not apply to Complainant even if preparation of vouchers and drafting of letters of advice were considered professional activities. For Complainant to be entitled to the supplementary payment prescribed by Personnel Policy No. 336 she would have had to perform, among other requirements, all of the duties of the higher-grade position. Complainant herself has never claimed to have discharged all the duties of Grade VII and IX accountants in BMA/FTC. Furthermore, under Personnel Policy No. 336, the higher-grade incumbent may not be performing the duties at the same time as the lower-grade staff member. As Complainant herself indicates, the accountants of the unit also prepared vouchers and wrote letters of advice even as she did. Lastly, Complainant would have to meet all requirements set out in the job description for the higher-grade position, a claim she has not made. As she does not fill any of the above requirements, she would not be eligible to receive the compensation provided for in Personnel Policy No. 336.

The main objective of Complainant in contending that she performed two duties of a professional nature on a permanent and not a temporary basis is actually to set aside the application of Personnel Policy No. 336 whose requirements she well knows she could not meet. Furthermore, Complainant wants the additional compensation for performance of allegedly professional services to be part of her basic salary for purposes of the Staff Retirement Plan, but Personnel Policy No. 336 and the Staff Retirement Plan specifically exclude supplementary pay for temporary performance of higher-grade duties from the definition of basic salary used in computing benefits under the Staff Retirement Plan.

F. Complainant's acceptance of a secretarial position was both expressed and implied.

Explicit, because Complainant knew when she signed her first temporary contract on 17 August 1979 and when she accepted the terms of her permanent appointment on 19 December 1980, that she was being assigned a secretarial position. In fact, when Complainant signed her permanent contract she had already been performing the duties of position #0584 for several months and did not object to the title of the position in the contract. Implicit, because Complainant performed secretarial duties for more than four years before requesting a review.

G. Complainant is not entitled to damages, inasmuch as she has not proven any financial injury from actions taken by the Bank.

Complainant's claim for damages in the amount of thirty-five thousand dollars (US\$ 35,000.00) is founded on her belief that she received lower pay than she should have because of the wrong category of her duties and the low classification of her position. Complainant was hired as a secretary and was assigned a secretarial position. She has not shown that her duties were incorrectly classified. It was always open to Complainant, as a secretary, to compete for promotion and had she passed the relevant test, she would have reached Grade X. During her stay in the Bank, Complainant has been paid in accordance with the salary scale applicable to all employees in positions of similar category and classification.

Complainant has not shown that the Bank caused her injury in classifying position #0584 as secretarial and later confirming that classification in violation of her employment terms, or in breach of rules or regulations, or by acting in bad faith or abusing discretionary authority.

7. In her observations on the answer to the complaint, Complainant laid special stress on the following:

A. The Bank's brief answering the complaint does not meet the requirements of Article 18 of the Rules of the Tribunal. It makes a number of allegations that have no direct bearing on the complaint while overlooking basic facts that are at the heart of the matter.

B. The complaint does not deal with questions of classification of positions, transfers, changes in job descriptions and other matters concerning Complainant and her administrative status that are brought up in the answer to the complaint.

C. The facts and grounds for the complaint were, in their essence, placed before the Conciliation Committee of the Bank, and this Committee, in its recommendations and conclusions, confirmed the facts and the grounds as to the professional duties and work performed by Complainant. The proceedings before the Conciliation Committee are essential to an understanding of the proven facts and grounds for the complaint, for the Committee is an independent IDB body whose record over the years bears out its effectiveness and impartiality.

D. Complainant does not rely on Personnel Policy No. 336 itself as the legal grounds for her complaint but on the general labor law principle, implicit in Personnel Policy No. 336, that imposes on the Bank the obligation of paying its staff a compensation reflecting the duties and work performed by the employee on instructions from the employer. Application of this general principle and of other similar principles such as "equal pay for equal work" never depends on the work being performed temporarily or permanently.

8. In its observations, the Bank underscored the following:

A. Complainant makes the broad allegation that the Bank's answer does not meet the formal requirements of Article 18 of the Rules of the Administrative Tribunal. The Bank, however, addressed each and every one of the issues raised by Complainant, but, for the sake of clarity, the structure of the discussion differs from that of the complaint because it seeks to fill chronological gaps and respond to arguments and allegations of Complainant which are value judgments instead of statements of the facts. By attaching extensive documentation to the answer, the Bank fulfilled its obligation of supplying the Tribunal with all available information to help it decide.

B. Contrary to the statement made by Complainant in her observations, the job description, the classification of the position and its category are not only relevant but essential to decide this case. Complainant asked for additional compensation for work performed in higher grades. Job descriptions are the basis on which positions are evaluated, on which classification and grade distribution rest, which in turn determines remuneration. To ascertain whether Complainant performed duties of a grade higher than that of the position she filled, it is first necessary to describe and then to classify the duties performed. Inasmuch as all these concepts are related, they must necessarily be addressed before establishing whether or not Complainant is entitled to receive the supplementary pay she claims.

C. The finding of the Conciliation Committee regarding the facts of the case may be interpreted only in the light of the role played by the Conciliation Committee, which is not to define disputed facts or decide the questions brought before it, but rather to propose conciliation alternatives and issue recommendations to the parties with a view to bringing them together. Only the Administrative Tribunal is empowered to decide the case and render a binding decision, as confirmed by the Judgment in Case No. 14, Marcelo Nunes Ribeiro vs. IDB, in which the Conciliation Committee decided that the employee had no right to receive additional merit increases and the Administrative Tribunal decided the opposite.

In addition, contrary to Complainant's claim, the Conciliation Committee did not establish that the duties performed by Complainant while in position #0584 were professional in nature, but rather that the nature of those functions was not strictly secretarial and might be administrative or professional.

D. As Complainant acknowledges, Personnel Policy No. 336 embodies the general principle of labor law that the salary paid to an employee must reflect the work done, which means that it is first necessary to define the nature of those duties. However, the facts described in the complaint do not prove that the duties performed by Complainant in position #0584 were or could have been classified as anything other than administrative. This because their performance did not require a substantial degree of creativity or discretion and did not entail professional responsibility. In other words, because Complainant's duties in position #0584 were of an administrative nature, her remuneration was adequate and consistent with the salary levels in effect at the time for similar positions.

9. The parties produced an abundance of documentary evidence made up, in the main, of memoranda, internal correspondence, resolutions, rules, policies, legal writings and court decisions from this and other administrative tribunals, focusing on Ms. Vendeuvre employment relationship with the Bank. Complainant insisted on the Bank producing the job description for the positions of the two Grade VII accounting officers in the Technical Cooperation Accounts Unit of BMA that were in effect when she worked in position #0584. On 10 April 1989 the Bank complied. The testimony of witnesses for the parties was ruled admissible by the President of the Tribunal, who commissioned the Executive Secretary, Mr. Hernán Sáenz Jiménez with taking the depositions. The following witnesses testified before him: Gerónimo Benítez, Weston Williams, Charles T. Brannan, Ricardo Blanco, María del Carpio, Luis Sánchez Masi and Fernando Acosta.

10. Following production of the evidence, the following facts are established:

A. On 17 August 1979 Complainant was temporarily hired by the Bank to fill a secretarial position. On 1 January 1981, in keeping with Personnel Policy No. 311, the Bank made Complainant a permanent employee in the same position she held.

B. On 16 April 1980 Complainant was transferred by the Bank to position #0584, then vacant in the field office and technical cooperation accounts section of the Budget and Management Accounting Division (BMA/FTC).

C. Position #0584 had, at least since May 1976, a job description. This circumstance was exceptional because, within the Bank, there are no individual job descriptions for secretaries but only a general description for all of them. For this reason, the job description for position #0584 had not been made official with all the normal formalities.

Among other tasks, Complainant performed the following as normal duties of her position:

(i) She affected financial accounts and accounting records in keeping with IDB's Chart of Accounts once the accountants had reviewed and approved the disbursement.

(ii) She prepared vouchers for transfer of funds, expenditure accruals and their cancellations and authorizations and refunds of payments made to field offices, based on worksheets prepared by the accountants.

(iii) She wrote letters of advice to the beneficiaries of the transfers made.

As for preparation of vouchers, the task involved transferring information from disbursement Forms or disbursement cables to an accounting form, without making any calculations or producing data. When the voucher was prepared by Complainant, the disbursement request or the cable requesting disbursement was received by an officer responsible for disbursements who reviewed the request. There was a process of validation and authorization at the end of which, with the relevant comments where appropriate, the documents were sent to Complainant for preparation of the voucher. Ultimately, responsibility for the accuracy of the information set out in the vouchers laid not with Complainant but, depending on the level of authority, with the following: for preparation, the officer in charge of the transaction; for review, the unit supervisor; and for approval, the Section Chief.

Grade VII professionals also performed duties and work related to the preparation of vouchers and the writing of letters dealing with technical assistance projects. When Grade VII staff members prepare these vouchers, the accounting officer himself rates the request, approves it, prepares the accounting forms and turns them in for approval. As to the specific tasks of preparing the vouchers, the function of Grade VII professionals is the same function performed by Complainant.

Complainant also prepared various types of correspondence. She did letters of advice to beneficiaries of disbursement transactions, memoranda initiated in the unit, information or cable authorization cables to regional offices, notes or aide memoirs needed in certain cases. Correspondence dealing with disbursement transactions was prepared on the basis of established models to which certain data from the accounting forms was added as needed. Ultimately, the person responsible for the information given

in the correspondence was whoever signed it, whether the Section Chief or the person to whom this task was delegated. In the Bank, it is normal for secretaries to prepare routine correspondence.

D. On 29 May 1981 Complainant for the first time took a secretarial test to win promotion to a higher grade, but was unsuccessful. Three years later, on 25 May 1984, Complainant passed her secretarial test and was promoted to Grade XII.

E. On 17 July 1984 Complainant asked for a review of the job description of position #0584 and its comparison with other similar positions within the Bank and with the positions of assistants within the division, with a view to a change in classification.

F. On 20 September 1984, following a desk audit of position #0584, the Bank decided that the position should remain classified as secretarial.

G. On 23 October 1984 Complainant requested reconsideration of the case. On 1 November 1984 Mr. Corredor, Chief of the Compensation and Benefits Division, advised Mr. José Epstein, Administrative Manager, that if position #0584 were taken to the Position Evaluation Committee (CEC) "... it would probably be assigned a grade lower than X." However, the job description of the position was never submitted to CEC.

H. On 14 January 1985 the Bank reiterated to Complainant that her duties were the same as those she had performed since her original appointment to position #0584. Nevertheless, her supervisors decided to assign the preparation of vouchers and the writing of letters of advice to other employees of the section.

I. On 21 February 1985 Mr. Ricardo Blanco asked Complainant to agree with her supervisor on a proposed job description in order to proceed to review the duties assigned to position #0584.

J. On 15 April 1985 Complainant asked Mr. Benítez for a review of the duties of position #0584. On 22 April 1985 Mr. Benítez advised Complainant that HUR had been asked for a desk audit, to be subsequently sent to CEC. On 29 April 1985 BMA asked HUR to take the position to CEC.

K. On 31 May 1985 Mr. Ricardo Blanco did a second desk audit of the position. On 25 June 1985 Mr. Ballivián informed Complainant that Mr. Blanco had drawn up a new job description, but Complainant did not accept it. Thereafter, it proved impossible for Complainant and Bank Management to agree on a job description for position #0584.

L. On 9 July 1985, citing Personnel Policy No. 326, Complainant for the first time requested payment for professional services rendered to that date and the evaluation of position #0584 by CEC. On 29 July 1985 Mr. Sánchez Masi turned down the request.

M. On 5 August 1985 Complainant informed the Bank that she had just obtained her Bachelor of Science Degree from American University. On 14 August 1985 she again requested amendment of the job description of position #0584, its evaluation by the Position Evaluation Committee, and its comparison with position #0926, Accounting Assistant, in BMA/FTC.



N. On 28 October 1985 Mr. Brannan asked Complainant to write her own job description. Complainant responded with two descriptions. The first accounted for the work performed until January 1985 and the second for what she did after that date.

O. On 18 April 1986 Mr. José Levy advised Complainant that she would be transferred to the Budget Section together with position #0584.

P. On 5 August 1986 Complainant was advised that HUR had decided to transfer her to the Accounts Section of the Travel Unit, to fill position #0583, Accounting Assistant, Grade XII.

Q. On 22 October 1986, Complainant asked HUR to be compensated for the professional work performed, under the procedure prescribed by Personnel Policy No. 326. Mr. Carlo Binetti, Chief of the Employment and Development Division, turned down her request on 6 November 1986.

R. On 21 November 1986 Complainant appealed before the DPA Manager. Mr. Sánchez Masi also turned down her request on 23 December 1986.

S. On 8 May 1987 Complainant filed with the Conciliation Committee the complaint provided for in Personnel Policy No. 326. Having heard the complaint, the Committee's preliminary recommendation to the parties was to conciliate their differences by means of a supplementary payment from Management to Complainant in an amount equivalent to 15 percent of her basic salary for the period ranging from 16 April 1980 to 12 January 1987 and to have this compensation computed as part of her regular remuneration for purposes of benefits such as overtime, Staff Retirement Plan, and others.

T. On 15 March 1988 HUR Deputy Manager rejected the recommendation of the Conciliation Committee.

## **CONCLUSIONS:**

11. Without addressing the question whether the duties performed by Complainant were secretarial or administrative, which is not an issue in the case, the Tribunal is nevertheless certain that they were not professional, the basis for her claim.

12. The remuneration for secretarial or administrative support duties is provided for under Grades XIII to X, there appearing to be no difference in remuneration between secretarial and administrative support duties.

13. The share of time Complainant devoted to preparing vouchers and notices does not alter the preceding conclusions, since it is not unusual for secretaries assigned to accounting units to perform such tasks.

**ACCORDINGLY:**

The complaint is unanimously dismissed by the Tribunal.

Washington, D.C., 5 May 1989.

Agustín Gordillo.

Kenneth G. Smith.

Ildélio Martins.

Alfredo Martínez-Moreno.

Baltasar Cavazos-Flores.

Thomas Buergenthal.

Luzius Wildhaber.

Hernán Sáenz-Jiménez  
Executive Secretary.