

## **JUDGMENT CASE NO. 30**

### **JOSE JESUS ERAZO vs. IDB**

The Administrative Tribunal of the Inter-American Development Bank (hereinafter the "Tribunal"),

Composed of Judge Alfredo Martínez-Moreno, President, Judge Thomas Buergenthal, Vice President, Judge Ildélio Martins, Judge Baltasar Cavazos-Flores, and Judge Guillermo López-Guerra, considered the case under the procedure prescribed by Articles 20, 21, 22 and 23 of the Rules of the Tribunal.

Complainant was represented by his attorney, Robert Bruce Wallace. The Bank was represented by Gay Davis Miller, of the Office of the General Counsel of the Inter-American Development Bank (hereinafter the "Bank"). In addition to the written pleadings, the Tribunal asked the Executive Secretary to hear the testimony of witnesses and on 8 February 1993 the full Tribunal heard oral arguments.

#### **WHEREAS:**

I. On 1 June 1992 Mr. José J. Erazo, a Mexican national and a former staff member of the Bank, filed a complaint with this Tribunal, petitioning for the following:

A. That the Tribunal order the evaluation and classification of Complainant's position based upon a valid job description which accurately sets forth his duties and responsibilities.

B. That the results of said classification apply effective 31 March 1989 when Complainant's position should have been evaluated and when his supervisor sought Complainant's reclassification.

C. That Complainant be entitled to the difference in back pay since 31 March 1989 between his reclassified grade and the Grade VIII held during that period.

D. That the Bank make appropriate contributions to the pension fund to permit Complainant to retire with the benefits of having worked at the reclassified grade between 31 March 1989 and the date of his retirement.

E. In the alternative, that the Tribunal find that Management has injured Complainant by compensating him at a Grade VIII in violation of the internal equity principles of the Bank and consequently must compensate Complainant US\$ 80,000.00 in payment for damages including anguish caused by the violation of his acquired rights of employment.

F. That Complainant be compensated for his actual costs and attorneys fees expended in presenting his case to this Tribunal.

II. In support of his petitions, Complainant set forth the following arguments:

A. The Bank violated Personnel Policy No. 332 by its failure to review Complainant's job description every three years and its failure to consider Complainant's position for reclassification.

B. The Administration did not attempt a desk audit until after Complainant had begun seeking relief through the appeal process. That audit and the evaluation presented to an *ad hoc* Position Evaluation Committee (PEC) were seriously flawed because the desk audit did not consider the full scope of Complainant's responsibilities and did not properly describe his job.

C. The PEC's deliberations also were flawed, because they were improperly influenced by the Administration and the pending complaint before the Conciliation Committee (hereinafter the "Committee").

D. Complainant challenges the authority of the *ad hoc* Position Evaluation Committee, composed of the Administration's representatives, who are defendants in this case, to objectively consider Complainant's position. Furthermore, the convening of said Committee was merely an effort at settlement, as it was empaneled while Complainant's case was pending before the Conciliation Committee. Therefore is not binding on Complainant.

E. Even if the evaluation process in 1991 were valid, it is negated by the fact that it was not completed. A difference in the evaluation of the PEC and/or the Administrative Manager requires special actions. This would warrant an analysis of the position utilizing internal comparators and external comparators as set forth in Personnel Policy Nos. 332 and 333. Had this occurred, it would have been apparent that the 1991 position description was inadequate for a proper evaluation and it would have been demonstrated that the most analogous external comparator, the World Bank, pays approximately US\$ 18,000.00 more per annum for a comparable position.

F. Finally, if the Tribunal accepts the findings of the Administration's *ad hoc* Position Evaluation Committee, it should permit the completion of the evaluation process in the manner set forth in the Personnel Policies of the Bank, i.e., the evaluation should take into account internal and external comparators.

III. The Bank answered the Complaint, asking the Tribunal to deny the claims made by Complainant on the following grounds:

A. The Grade VIII assigned to Complainant's position was determined in accordance with the system then in effect.

Respondent agrees with Complainant that the system which should be applied to this case is the one in effect in 1989. This is the same system which was applied by the PEC when it evaluated Complainant's position in September of 1991 and determined that it should continue to be classified as a Grade VIII.

A new job description was prepared early in 1989 to reflect the addition of a new function, but the nature and degree of the change was not sufficiently substantial to require a reevaluation. By Complainant's own description, there was no change in functions after 1989.

The PEC is not required to conduct a formal evaluation of a position whose basic functions do not undergo substantial change, and according to the rules of the system in effect, the PEC was proscribed from giving a new grade to a position whose functions had not changed.

The evaluation process was a fair and objective one. Complainant signed his various job descriptions indicating his agreement that they properly reflected the level of the work he was performing. His supervisors also signed those descriptions. The basic functions and level of responsibility of the job did not change over the years. The position was reviewed on several occasions by different individuals with the same results. Therefore, there is no indication that he suffered any loss by the failure of the Bank to formally reconsider the level of his position in 1989. A mere increase in the volume of work or a change in functions of the same nature, does not change the comparative level of a position.

The level of the position did not vary, the descriptions did not at any time reflect any material change in his duties which would have warranted a revision of the grade given to that position. Thus, the frequency of the reviews was immaterial. There is no reason whatsoever to suppose that had Complainant's job description been rewritten at any time between the years 1981 and 1992 that his position would have been classified at a higher grade. It was formally evaluated on five occasions, and reviewed and found not to merit a formal evaluation on another, in that eleven-year period, by different individuals, according to the same criteria, and with the same results each time. Therefore, Complainant suffered no damage and has no entitlement to recover damages.

B. Comparators are used to determine different ranges of salaries at various levels, and are not used as a measure of the adequacy of the salary of any individual staff member. The salary of an individual staff member is determined by his grade, his seniority in the institution, the extent to which his entry level salary was affected by his level of remuneration in his previous employment, and his level of performance in comparison with that of his professional peers. Therefore, any reference to the salary of someone alleged to occupy a "comparable position" in the World Bank is irrelevant.

Furthermore, Personnel Policy 332 provides that jobs will be classified "in comparison with others in the Bank." Thus, the level of a position in the Bank is determined, not by comparison of the salaries paid to staff in positions with similar titles in other international institutions, but by comparing the required abilities and responsibilities of the position in comparison with those of other Bank positions.

C. Grade VIII was an appropriate level for the position occupied by Complainant. Complainant asserts that certain other positions in the Bank with higher grades are similar to his own. However, upon examination of these positions it is clear that they are different in nature and scope.

D. Complainant asserts that the proper description of his job on which the grade of his position should be determined is the one he prepared in February of 1992 on the new Form HUR-664. A job description form is merely a tool used to organize information. Use of the new form does not change the content of the job. Moreover, this form was designed to be used with the new system which was not in effect at the time Complainant's position was evaluated in 1991.

E. The meeting of the PEC in 1991 which confirmed that the position occupied by Complainant should be a Grade VIII was not composed of an *ad hoc* membership as alleged by Complainant, and its convening was in accordance with the applicable procedures. The members of the PEC who reviewed Complainant's position were, with the exception of the President of the Staff Association, the same individuals who normally constituted the PEC when positions in the Administrative Department were evaluated.

Complainant implies that the panel was convened to verify the result with which he disagreed. In fact, his position normally would not have been reevaluated because no significant changes in duties had occurred. If there was an unusual procedure, it was to conduct yet another evaluation when there was no apparent need.

Furthermore, Complainant asserts that his case was pending before the Committee when he was advised that the grade of his position would be reviewed. However, the claim was not submitted to the Committee until a later date, after Complainant was advised that the grade of his position would be reevaluated. Complainant also indicated to the Secretary of the Committee in his note of 22 August 1991 that he was in agreement that the proceedings of the Committee should be suspended pending consideration by the PEC. It is therefore unreasonable for Complainant to now suggest that review by the PEC at that time was not appropriate.

F. The Bank had made no promise to promote Complainant and a recommendation for a promotion by a supervisor without authority to approve the action is not binding. Following the recommendation of his supervisor in 1980 that Complainant be promoted, however, the position was formally evaluated three times in three years, and each time found in accordance with the grading classification system then in effect to be properly graded at level VIII.

Even in 1989 when Complainant's immediate supervisor prepared a new job description which included the newly assigned photocopying duties, the Section Chief, the Division Chief and the experienced professionals in the Salary Administration Section who received the new job description did not see any substantial change in the duties which would have warranted a formal reevaluation of the level of the position. Nor did the Section Chief or the Division Chief recommend an upgrading of the position or a promotion of the Complainant.

G. In 1989 the Administrative Manager was exploring a variety of alternatives for the possible reorganization of the Administrative Department. One possibility, very briefly explored and never pursued, was that of regrading the Graphics and Communications positions. To this end, Mr. Ciammaichella prepared a personal worksheet on which he noted various possibilities for restructuring the Section. The worksheet was never signed and never dated by Mr. Ciammaichella. The Administrative Manager also never approved the worksheet and it does not contain his handwriting. Yet this worksheet has been represented by Complainant to demonstrate the "recommendation" of the Administrative Manager. The worksheet does not represent a decision by the Bank or any of its officials. It is not a promise or even a recommendation upon which Complainant is entitled to rely.

H. A desk audit consists merely of a meeting with the staff member "at his desk" to discuss his duties for the purpose of verifying and clarifying his job description. It is absurd for Complainant to argue that the Administration merely "attempted" a desk audit when a meeting was held between Complainant and a representative of the Salary

Administration Section on 12 June 1991 to review his job description. The fact that Complainant signed the new job description indicates that he agreed with the description.

IV. The documentary evidence produced and testimony received have served to establish the following facts:

A. On 6 February 1978 Complainant joined the Bank as Supervisor of the night shift of the Printing Unit of the Graphics Section and was subsequently assigned supervision of the day shift, a Grade VIII position. He remained in this position until his retirement from the Bank on 30 June 1992. Throughout Complainant's tenure at the Bank, the position remained graded at level VIII.

B. Complainant's position was evaluated by the Position Evaluation Committee (PEC) in 1981 1982 1983 and 1985. On each occasion, the PEC concluded that Complainant's position was properly classified as a Grade VIII position.

C. In 1988, Mr. Horacio Ciammaichella became Chief of the Graphics Section and Complainant's supervisor. In March 1989, Complainant's job description was updated to reflect the addition of certain changes including: the added duties of supervising the operation of all the photocopiers throughout the Bank, a substantial increase in the volume of work and the continual need to keep technology of the equipment purchased up-to-date. There was no request to regrade the position and no desk audit was performed at that time.

D. By memorandum to Mr. Ciammaichella dated 17 April 1991, Complainant set in motion the grievance procedure requesting reclassification of his position to Grade VI. He mentioned the regrading of other positions in the Graphics Section.

E. On 1 May 1991 he submitted his complaint to Mrs. Rosa Olivia Lawson, the HUR Deputy Manager.

F. On 15 May 1991 he submitted this complaint to Mr. Richard Herring, Manager of the Administrative Department.

G. Mrs. Lawson responded by memorandum dated 28 May 1991, stating that she had requested that a revised job description he presented for the formal consideration of the PEC.

H. On 20 June 1991 Mr. Ciammaichella sent Mr. Mario Bergman, Chief, a.i., of the Salary Administration Section, a new job description for Complainant's position which had been reviewed and signed by Complainant, his supervisor, Mr. Ciammaichella, and the Division Chief, Mr. Gerry Higgs. Shortly thereafter, this job description was submitted to the PEC for review.

I. On 10 July 1991 Complainant filed his grievance with the Conciliation Committee.

J. On 22 August 1991 Complainant wrote to the Secretary of the Committee that he agreed to the suspension of the proceedings of the Committee pending consideration of the case by the PEC. However, he added, "...my complaint still stands in all respects..."

K. On 22 September 1991 the Committee suspended its hearing of Complainant's case pending the outcome of the review by the PEC.

L. Complainant's position was evaluated by the PEC on 6 September 1991 on the basis of the new job description. It confirmed that Grade VIII was the appropriate level for Complainant's position. As on the earlier occasions, the methods of assigning weights to the tasks of a position under the grading system in force at that time was such that it would have been impossible for position #105 to be upgraded based on the changes that had been made in the job description.

M. Complainant continued his claim before the Committee. The Committee recommended that the Administration revise all job descriptions within the Graphics Section and submit them to the PEC for classification, and that Committee further recommended that Complainant accept the PEC's decision.

N. On 25 November 1991 the Bank introduced the "New Professional Job Classification Standard," which used a different set of criteria for defining positions, a different point system on which to rank Bank positions, and required a new position description form. The new system went into effect on 2 May 1992. Complainant had completed and signed a new position description form on 7 April 1992. Subsequently, Complainant retired from the Bank.

### **CONSIDERING THAT:**

Position #105 (Chief of the Printing Unit) held by Mr. Erazo from 1978 until he retired from the Bank was classified as a Grade VIII position by the PEC in 1981 1982 1983, and 1985. Complainant did not formally challenge those evaluations.

In 1991, position #105 was again evaluated by the PEC which kept it at Grade VIII. Irrespective of the procedure followed for this last evaluation, it cannot be overlooked that the job description on which it was based was signed by Complainant without objection, signifying his express concurrence. Furthermore, Complainant took part in the desk audit of that job description.

The job description thus prepared and explicitly agreed to by Complainant, did not warrant a change in grade. Indeed, as the evidence shows, Mr. Erazo's position underwent changes between 1985 and 1991. However, the factors that ultimately determined promotion to a higher grade under the grading system then in force did not change substantially.

The Tribunal does not fail to note the arguments that the case was not properly submitted to the PEC and that the valid job description ought to be the one that was prepared in 1992, also with Complainant's participation. However, this last job description was meant to be used with the new job grading system that went into effect after Complainant had retired.

It is also noted that Complainant reserved his rights when the PEC reviewed his position and that he ought to have used more appropriate legal wording to defend his interests. None of these matters bear on the issue to be decided.

Even though it is clear that the Bank did not evaluate in a timely manner Complainant's position, the Tribunal would be speculating in determining that such evaluation would have resulted in a grade change, especially since the previous five evaluations did not result in such a change.

Reasons of a technical nature or based on Bank practice, justified the Grade VIII level of position #105. Even if his supervisor and a Manager had recommended his Position's reclassification, this would not have been binding on the Administration.

**THEREFORE:**

Complainant's claims are dismissed.

Washington, D.C., 12 February 1993.

Alfredo Martínez-Moreno  
President.

Thomas Buergenthal.

Ildélio Martins.

Baltasar Cavazos-Flores.

Guillermo López-Guerra.

Hernán Sáenz-Jiménez  
Executive Secretary.