

## **JUDGMENT CASE NO. 32**

### **MARIANA C. RENART vs. IDB**

The Administrative Tribunal of the Inter-American Development Bank,

Composed of Judge Kenneth G. Smith, President, Judge Alfredo Martínez-Moreno, Vice President, Judge Ildélio Martins, Judge Baltasar Cavazos-Flores, Judge Thomas Buerghenthal, Judge Luzius Wildhaber and Judge Guillermo López-Guerra, examined the case under Articles 20, 21, 22, and 23 of the Rules of the Tribunal.

Complainant was represented by her attorney, Monique Pérez, Esq. The Bank was represented by Gay Davis Miller, Esq. In addition to the briefs the Tribunal asked the Executive Secretary to take the testimony of witnesses. The full Tribunal heard oral arguments on 12 December 1992.

#### **WHEREAS:**

I. On 17 June 1992, Mrs. Mariana C. Renart, an Ecuadorian national and staff member of the Bank, filed a complaint with this Administrative Tribunal requesting the following:

1. An investigation of the accusations of "inadmissible indiscretions" made against her, so as to verify their falseness and remove from her service record and all Bank records any reference to those accusations.
2. A finding that the penalty of transfer imposed on her by her supervisor on 14 November 1991 is null and void, and the removal of any reference to those events from her service record and from all Bank records.
3. A finding that the removal of Complainant's duties is null and void, and the restoration of all her duties, as well as removal of any reference to this measure from all Bank records.
4. A finding that there was harassment against Complainant and that Mrs. Sara Ordóñez-Noriega, Assistant General Counsel, should be removed from Complainant's supervisory line.
5. The taking of the proper disciplinary measures against Mrs. Ordóñez because of her repeated violations of professional ethics and job misconduct, making a record of it in her service file.
6. Payment of compensation to Complainant in the amount of US\$ 166,788.00.
7. Payment of attorney fees in favor of Complainant.

II. In support of her petitions, Complainant explains the following:

1. Complainant has been serving the Bank for over twenty five years in an exemplary manner. To this day, her ability and discretion has never been questioned, and she has received from her supervisors outstanding evaluations and many commendations because of her efficiency. This may be seen from her performance evaluations and merit pay ratings which she asked that the Bank produce. This Complaint is intended to restore her good professional reputation, which was gravely affected by the events that took place as from 14 November 1991.

2. On 14 November 1991, Complainant, following instructions from her supervisor, proceeded to communicate to Mrs. Alejandra Frolia that she would not be assigned to a temporary secretarial position because she had a young child who would detract from her dedication to the job and would make her work less effective. After Mrs. Frolia asked the supervisor, Mrs. Ordóñez, for an explanation about this flagrant discrimination based on maternity, Mrs. Ordóñez ordered Complainant's transfer and began to harass her in a number of ways.

3. Mrs. Ordóñez unilaterally ordered Complainant's transfer as a penalty on the grounds that Complainant had committed inadmissible indiscretions (by doing exactly what Mrs. Ordóñez herself had asked her to do). Despite her request, the charges against her were never specified, nor was there ever any independent investigation of the truth of the accusations made against her, all of which is clearly a violation of due process.

A disciplinary measure was taken against Complainant without any warning, reprimand or prior notice of any kind, without any formal written notice of its grounds and its scope, without any specific explanation of the fault laid to her, without any investigation of the charges or any opportunity to defend herself.

4. When Mrs. Ordóñez realized that the transfer was not a viable penalty she continued harassing Complainant, first by referring to her by a title that was distinctly lower than the title of her position and later transferring or removing 85 percent of her duties, alleging first the unsuitability of Complainant and later the reorganization of the Legal Department (which had not yet begun). Not content with this, she assigned to Complainant, according to floor plans approved only by her, an office shared with one of Complainant's subordinates, thereby violating the policies and the practice of the Bank in this area.

5. These actions of Mrs. Ordóñez are in breach not only of the IDB Personnel Policies but also of principles established in various judgments of the Administrative Tribunals of the IDB, the World Bank and the ILO.

IDB Personnel Policy No. 323 and 324 require Management to inform staff members as soon as possible about every matter affecting their conditions of service, and immediate supervisors are to inform employees about changes in their employment conditions only after such changes have been officially approved. Supervisors are also under an obligation to make sure that employees are not ignored on matters related to the responsibilities of their job. These provisions further establish that personnel actions must be impartial, fair and based on independent and truthful assessments of the performance of staff members. In the present case, Complainant's employment conditions were affected without any communication or explanation whatsoever; she was ignored with respect to the duties that were her responsibility under her job description,

and there was never any investigation leading to an independent and truthful assessment of the events.

Judgments of the Administrative Tribunal of the IDB recognize the Bank's right to transfer a staff member provided this is not in breach of personnel policies or the staff member's job conditions (Tula Amas, Case No. 9). In another case, (Arminda Buria-Hellbeck v. IDB, Case No. 23) the Tribunal held that the principle of due process must be observed in any administrative decision. In the present case, the facts show that there was no due process whatsoever in, first, ordering Complainant's transfer, and then, stripping her of most of her duties.

In the Gyamfi case, the Administrative Tribunal of the World Bank held that failure to inform the employee about the charges against him, prevented him from exercising his right to defend himself. This is exactly what happened with Complainant, who was unable to defend herself against charges of which she had no knowledge.

The Administrative Tribunal of the ILO, for its part, established in the Sita Ram case the implicit duty of Management to respect the dignity and reputation of staff members. In the present case, Mrs. Ordóñez' actions greatly affected the dignity of Complainant as well as her professional reputation, because all these events were recorded in her service file. Likewise, the ILO Administrative Tribunal, in the case of an employee who was ignored in the area of his responsibilities and was left without duties, held that this had caused a serious emotional injury that required compensation (Schoefield case). In the present caseS the stress suffered by Complainant has increased with the continual harassment to which she has been subjected, a harassment of which the whole Legal Department is aware and which has caused very serious emotional distress to Complainant.

6. Complainant asked Management to intervene in order to amicably settle the problems between her and her supervisor; however, Management's actions have been improper in that they have also disregarded the personnel policies of the IDB, the principle of procedural fairness, and have concealed from Complainant key pieces of evidence during the proceedings (such as the Aide Mémoire from Mrs. Ordóñez). In addition, Management's actions have been marked by incomprehensible delays that unnecessarily lengthen the distress caused to Complainant.

7. Payment of attorney fees is not barred by the Statute of the Tribunal and the Tribunal should award them to Complainant. It is owing to the overwhelming recklessness demonstrated by Management in litigating this case, with its ensuing emotional injury and monetary expenses for Complainant as well as unnecessary expenses for the Bank that attorney fees should be awarded in order to restore the rule of law and convince Management that it must respect the judgments of the Tribunal.

III. The Bank answered the Complaint and asked for its full dismissal.

IV. The Bank argues as follows:

1. Complainant's excellent evaluations have no significance in themselves because the then General Counsel, Mr. Levinson, did not demand of Complainant the full responsibility of her position.

2. Complainant has not proven the existence of harassment on the part of Management, a breach of her contract or the violation of internal rules of the Bank. The Bank denies that Complainant has suffered any material or intangible injury as a result of an act or an omission committed by the Bank in violation of any of Complainant's rights.

3. The meeting between Mrs. Ordóñez and Complainant on 14 November 1991 dealt with coordination of personnel matters in the Department, particularly the need for a replacement secretary during the Christmas holidays and not, as Complainant claims, the relaying of a message to Mrs. Frolia. At no time did Mrs. Ordóñez ask Complainant to relay a message to Mrs. Frolia.

4. Complainant knew perfectly well the reasons why Mrs. Ordóñez requested her transfer. Complainant met with Mrs. Ordóñez on 15 November 1991 and she explained that because of what Complainant had told Mrs. Frolia about her advancement prospects, Mrs. Ordóñez had lost confidence in Complainant as the person with whom she could work in managing the staff of the Department.

5. Mrs. Ordóñez acted in the interest of the Bank by deciding to transfer Complainant. The Agreement Establishing the Bank provides, and the Tribunal has acknowledged it in the Tula Amas case, that the primary consideration in determining staff assignments is their efficiency, competence and integrity.

In addition, Tribunals like the Court of Justice of the European Community have held, in cases where the staff member has a difficult relationship with his supervisor, that the decision to transfer, taken with full regard for his rank and financial rights, constitutes a legitimate means of putting an end to a situation that hampers the proper operation of the Organization (Guiseppe Scuppa v. Commission of the European Community).

In the present case, Complainant acted in a manner that seriously disquieted her immediate supervisor. After discussing the matter with Complainant, the supervisor believed that a transfer was a solution to which Complainant agreed. It was only after this conversation that the supervisor proceeded to take steps in order to set in motion the transfer procedure. Mr. Jones, HUR Deputy Manager, met with Complainant and also believed that she agreed to be transferred. When Complainant later changed her mind because the transfer did not entail an immediate reclassification, she was allowed to remain in the Legal Department, but without some of the duties connected with personnel management, because owing to the recent event, Mrs. Ordóñez believed that it was in the interest of the Bank to remove from Complainant those duties in the performance of which she could cause damage similar to the one she had caused in the case of Mrs. Frolia.

6. The use of the title "Administrative Assistant" by Mrs. Ordóñez when referring to Complainant was not intended as, and did not constitute, harassment. The expression "Administrative Official" is used perhaps more frequently than "Chief of the Support Services Unit" as a generic, descriptive phrase, simply because it is easier to pronounce and write. Complainant has not shown that she suffered any injury because Mrs. Ordóñez did not always use the technical title of her position.

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\*The Tribunal does not find in the sources cited by the Bank the basis for this statement.

7. Complainant was not left with nothing to do, nor was she asked to do work that was not part of her regular duties. She was asked to give priority to some of her other regular duties at a time when the physical reorganization of the Department was enough to keep her fully occupied.

8. The assignment of a new office to Complainant did not violate Bank rules. Within the functional reorganization of the Legal Department it was decided to also reorganize the physical layout of offices so that working units might be placed together; thus, Complainant was assigned to the office next to the General Counsel, to whom she reports directly. Complainant was aware of this process and she coordinated it.

The Administrative Policy on professional offices does not say that there will be no glass wall or that there will not be a common door. It is not a shared office because neither occupant can see the other from her office; as for all other specifications, they were faithfully complied with by Management.

9. No "penalty" has been imposed on Complainant. She has not been transferred, has not lost her title, and has not been demoted. The supervisor who has direct and personal knowledge of the facts has the right to characterize the actions of the subordinate and has the duty to act in the interest of the organization in order to avoid potential problems in the future. The ILO Tribunal has pointed out in a transfer case that absence of conflict between the employee and the supervisor is an important element of efficiency (Glorioso case).

The final decision on the functions of the Unit and Complainant will be adopted according to the needs of the Legal Department in light of its new structure. It would disturb the management of the Department at this point to restore Complainant's duties when the reorganization is still pending.

10. Mrs. Ordóñez left the Bank on 30 June 1992. Complainant's petitions concerning future actions of Mrs. Ordóñez or her future supervision are moot issues.

11. Complainant has suffered no material injury. She continues to have her title, grade and salary. Management offered her a position consistent with her qualifications and at the same grade level in the External Relations Department, with a strong reclassification prospect; she did not accept the offer and is in any event responsible for not taking the necessary action to mitigate a possible injury to her career.

12. The costs of the proceedings, according to the Statute of the Tribunal, must be borne by each party. If the Executive Board had wanted to distinguish between attorney fees and other costs it would have done so expressly in the Statute.

13. The case law cited by Complainant is not applicable to this case.

V. The Tribunal finds the following facts to be established by the evidence:

1. Complainant joined the Bank on 17 September 1967. Throughout her twenty five years of service Complainant has been an exemplary employee, as shown by her evaluations up to 1988. Regarding her Merit Pay increases (as of 1989) there is nothing in the record which would allow the Tribunal to determine Complainant's performance relative to her peers. Notwithstanding, from the information which was available it can be

gathered that Complainant's performance in absolute terms continued to be fully competent through 9 November 1991.

2. On 14 November 1991 Complainant and Mrs. Ordóñez had a conversation about personnel matters in the Legal Department.

3. Complainant claims that during this conversation Mrs. Ordóñez gave her instructions to tell Mrs. Frolia that she could not be assigned to a temporary secretarial vacancy because of her young daughter, who might be neglected because of the long hours that the new position implied. Mrs. Ordóñez denies having given instruction that Mrs. Frolia be informed of the reason for which she would not be assigned.

4. On 14 November 1991 Complainant told Mrs. Frolia, that she would not be assigned to that position for the above reasons.

5. On 15 November, Mrs. Ordóñez, after hearing Mrs. Frolia's complaint, told Complainant that because of the incident with Mrs. Frolia, she (Mrs. Ordóñez) had lost confidence in Complainant and had arranged for her to be transferred out of the Legal Department. Complainant answered that all she had done was follow instructions, but that she would nevertheless go and talk with Mr. Jones, in the Human Resources Subdepartment, as she was being ordered to do, and that if she received an offer that put an end to her long underclassification she would have no objection to leaving her present position.

6. Complainant, following orders from her supervisor, met with officials of the Human Resources Subdepartment (HUR) making it clear that she had not accepted and would not accept a transfer as a penalty.

7. However, on Monday the 18th, Complainant was advised that she had been transferred, effective that same date, to a classification and computer data entry job in HUR, until a position consistent with her experience could be found.

8. On Tuesday 19 November 1991 Complainant learned of the grounds for her transfer through a memorandum sent by Mrs. Ordóñez to Mr. Jones, HUR Deputy Manager, in which Complainant was accused of having committed "inadmissible indiscretions."

9. Complainant asked in writing to be informed of the specific charges against her. Management claims that this was done orally in a conversation that Complainant and Mrs. Ordóñez had on 15 November 1991.

10. On 21 November 1991 Complainant filed a grievance with HUR Deputy Manager under Personnel Policy 326, contending that a disciplinary measure had been taken against her unfairly without giving her an opportunity to exercise her right to defend herself.

11. On 3 December 1991 Complainant received from HUR an answer to her Complaint. The answer reiterated the offer to place Mrs. Renart temporarily in HUR until some other position could be found for her, and it went on to explain that it was not for HUR to assess the reasonableness of the supervisor's actions. Complainant was advised to accept the transfer.

12. However, by memorandum dated 3 December 1991, Mrs. Ordóñez rescinded the transfer, restoring Complainant to her position as Chief of the Support Services Unit of the Legal Department while requesting her, at the same time, to relinquish to two subordinate staff members all her personnel duties in the Department. The duties of which Complainant was stripped account for 85 percent of the duties in her job description.

The Bank acknowledges in its rejoinder that it is possible that Mrs. Ordóñez may have acted hastily in requesting Complainant's transfer, but it goes on to say that once it became apparent that Complainant rejected the transfer, Mrs. Ordóñez withdrew her request and simply reassigned the duties that concerned her.

13. On 10 December 1991 Mrs. Renart submitted her complaint to the Manager of the Administrative Department.

14. The Administrative Manager put off his answer to the Complaint until 25 January. In the meantime, Complainant and Management's representative, Mr. Fernando Jiménez, held talks which did not lead to a settlement.

15. On 3 February 1992, Complainant submitted her complaint to the Conciliation Committee, which was also asked to conduct an effective investigation into the events that prompted the complaint, as provided for in Personnel Policy 326.

16. When the Legal Department moved, Complainant was assigned a new office whose space and entry door she shared with one of her subordinates.

17. Beginning in January 1992 Mrs. Ordóñez continued to remove additional duties from Complainant, distributing them among lower-grade staff.

18. Both the Administrative Manager, when answering the complaint, and Management when answering it before the Conciliation Committee, alleged that none of the actions taken constituted harassment in any way and that Complainant had never been subjected to disciplinary measures.

19. On 29 April 1992 the Conciliation Committee issued its preliminary recommendations, confirming that Mrs. Renart had been demoted in violation of her right to due process. The Committee also noted the complete lack of any investigation of the events that gave rise to the complaint, which translated into a violation of her right to defend herself.

In the course of these proceedings, Management contended that the decision to reduce the duties of Complainant was directly connected with the reorganization of the Legal Department.

Neither at the time of the events that give rise to the dispute nor up to the present time has any reorganization of the department been formalized or approved.

However, the Committee stated that there had been no harassment and that the office assigned to Complainant is not in breach of established Bank rules.

20. On 20 May 1992, Management gave its answer to the Committees' recommendations, basically stating that it had no objection to cleansing Complainant's

service record or to removing Mrs. Ordóñez from her supervisory line, but that the duties of which Complainant had been stripped would not be returned to her because they would henceforth be performed by the General Counsel himself.

21. On 26 May 1992, Complainant replied to the Committee in writing, explaining her reasons for not being able to accept the Committee's recommendations, after which she asked the Committee to issue its final report in order to proceed to file her case with the Administrative Tribunal.

## **CONSIDERING:**

In this case, the Tribunal is confronted with contradictory versions of an incident that took place on 14 December 1991. Complainant stated that, following instructions from the supervisor, Mrs. Ordóñez, she communicated to Ms. Frolia that Ms. Frolia would not be assigned to a temporary secretarial position because she had a young child, which would detract from her dedication to the job. In the Bank's view, Complainant's communication to Ms. Frolia was uncalled for and constituted an inadmissible indiscretion.

Complainant alleges that this incident led to various attempts to penalize her without due process and without proper investigation, first by an attempted transfer, then by continued harassment and by stripping her of up to 85 percent of her functions. The Bank in turn denies the existence of any harassment or discrimination, explaining its actions by the reorganization of the Legal Department and by Complainant's own wish to be transferred to a job with more immediate advancement prospects.

The Tribunal does not consider it necessary to determine which of the two conflicting versions is true. It finds, first of all, that in view of the evidence presented to it and in the context of the case, the Bank's actions towards Complainant must be understood to have been punitive in character and cannot be explained away by attributing them to ongoing reorganizations. Assuming for the sake of argument that the Bank is right in claiming that Complainant committed an indiscretion, the Tribunal finds that the Bank's subsequent attitude and action constituted a massive overreaction, which was not proportionate to what the Bank blamed on Complainant.

Complainant had served in the Bank for over 25 years with a very solid work record. The Bank's contention, incidentally, that Complainant's prior good evaluations are to be explained only by the personality of the then General Counsel is unsupported by evidence and does not deserve to be taken seriously. Given this background, there was no a priori reason for the Bank to doubt that Complainant's communication to Ms. Frolia may have been made in good faith. Nor was there any reason to deny her the right to be heard, to be informed of any alleged misconduct, and to have an investigation by one or more impartial and uninvolved persons, rights which emanate from Personnel Policy 323 on "Work Relations between Supervisors and Employees" and which, moreover, constitute general principles of law. [Compare Case No. 23, Buria-Hellbeck.]

## **THEREFORE:**

The Tribunal orders:

1. That the Complainant's duties taken away be restored to her;



2. That Complainant be awarded the equivalent of one year of her salary, US\$ 55,596.00, for damages sustained;

3. That she be provided with office facilities in keeping with her status;

4. That all reference on her personnel file resulting from the incident of 14 November 1991 be expunged.

This finding, along with the reasons for it, constitutes an adequate and sufficient answer to Complainant's petitions 1, 2, and 3. Owing to Mrs. Ordóñez' departure from the Bank, petitions 4 and 5 no longer arise for decision.

The petition for attorney's costs is denied.

Washington, D.C., 13 November 1992.

Kenneth G. Smith  
President.

Alfredo Martínez-Moreno.

Ildélio Martins.

Baltasar Cavazos-Flores.

Thomas Buergenthal.

Luzius Wildhaber.

Guillermo López-Guerra.

For reasons stated in his dissent in Case No. 29, Belt v. IDB, Judge Smith respectfully dissents from the award made for damages in this case.

Kenneth G. Smith  
President.

Hernán Sáenz-Jiménez  
Executive Secretary.