

ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

**Decision No. 10
(8 January 1996)**

**Gordon E. Wilkinson
v.
Asian Development Bank**

**Mark Fernando, President
R. Gorman, Vice-President
L.M. Singhvi**

1. The Applicant occupied the position of Economics Editor in the Economics and Development Research Center ("EDRC-CS") from September 1989 to January 1994. Several times during that period, the Applicant requested the Bank to establish a proper job description for his post and to provide a position classification. His dispute with the Bank on that score led to his filing an appeal in June 1994 with the Appeals Committee seeking the expeditious establishment of a job description and position classification for his former post which he had held until January 1994. However, in August 1994 the Bank informed the Appeals Committee that it had decided to grant the Applicant's requested relief, and thereupon, on 22 August 1994, the Appeals Committee closed the case.

2. Thereafter the Bank took steps to fulfill its undertakings. In August 1994, EDRC (principally through its Chief Economist) drafted a job description, which it sent to the Applicant on or about 26 August. The Applicant objected to its accuracy, and proffered his own more detailed description that had been prepared by him in January 1994. On 14 September 1994 the Bank informed the Applicant of its decision to carry out "an independent review of BPTD's [Training and Development Division] evaluation of the job description submitted by EDRC for the Economics Editor, EDRC-CS. Manager BPTD would make arrangements for an external review of the already completed evaluation". On 16 September 1994, the Bank contracted with Hay Management Consultants ("Hay") "to classify an Economic Editor's position based on two job descriptions, one reflecting the scope and job responsibilities of the position some five years back, and the other describes [sic] the current position's scope and responsibilities".

3. Hay, which had developed and implemented the Respondent's existing job classification system in 1981-82 and had done so as well for other international organizations such as the World Bank, broke down the components of the position of Economics Editor, EDRC-CS, into three categories -- Know-How, Problem-Solving, and Accountability -- and awarded "Hay Points" for each. In a report submitted to the Respondent in September 1994, Hay explained how it applied its point system to the less detailed position description, which resulted in a point total of 890 Hay Points and placed the position in the range of Level 3 (which embraced the 841-940 point range). Hay reinforced its conclusion by using another position, Project Specialist, as a comparator. Hay also evaluated the January 1994 job description (prepared by the Applicant), and concluded that it did not describe "a fundamentally different position though it does provide greater detail" and that it did not warrant a higher evaluation than 890 Hay Points.

4. On 4 October 1994, the Respondent informed the Applicant that the President had approved the classification of the position of Economics Editor, EDRC-CS, at Level 3, and that this classification applied to both of the submitted job descriptions. Apparently treating the letter of 4 October 1994 as a refusal of the agreed relief, the Applicant filed this Application within ninety

days thereafter. The Respondent took no objection to the admissibility *ratione temporis* of the Application.

5. The Applicant contends that the evaluation and classification accorded by the Respondent to the Economics Editor, EDRC-CS position, occupied by him from 1989 to 1994, are flawed both in content and in the process through which they were determined. He claims that the EDRC job classification failed significantly to incorporate important elements of his work, all of which involved greater responsibility and expertise; that the work of the Economics Editor, EDRC-CS, was particularly similar in content to two positions, the Economics Editor, Project Economic Evaluation Division ("EDEV"), and the Senior Executive Officer, which were both allegedly rated at Level 4 and which were not considered as comparators by Hay; that the job evaluation and classification process was carried on unfairly without giving him due notice; and that the objectivity of Hay is very much in doubt. The Applicant asserts that, in all these respects, the Respondent's action was an abuse of discretion, being arbitrary, improperly motivated, and the product of an unfair and unreasonable procedure. In particular, he emphasizes the provisions of the Bank's Personnel Handbook for Professional Staff, which he asserts to be part of his contract of employment and which provides on the subject of job classification:

"Positions within the Bank are placed within a hierarchy of jobs and job position levels are set according to a system of job classification. This approach assures that remuneration and organizational positioning is [sic] equitable and based on the weight of the responsibility of the job. This system covers the content of the job and serves as a means of comparing different jobs."

The Applicant seeks compensation for "all damages, tangible and intangible, suffered from the Respondent's refusal to observe its obligations" in relation to job classification, and requests the Tribunal to order the establishment of an accurate job description for the period he occupied the position of Economics Editor, EDRC-CS."

6. The Respondent asserts that the job description prepared by EDRC was accurate; that in any event both the EDRC description and the description prepared by the Applicant himself were submitted to Hay for evaluation, and that Hay classified both at the same grade level; that there were no procedural flaws in the process of the job description, evaluation and classification; and that Hay, having unimpeachable credentials and experience in job evaluation and classification, utilized fair and objective criteria and comparators, and reached a sound and reasonable conclusion, as did the Respondent when it classified the position of Economics Editor, EDRC-CS, at Level 3.

7. The issues before the Tribunal are whether the Respondent's decision to classify the Applicant's position at Level 3 was arbitrary or otherwise a violation of his contract of employment, and whether the procedure utilized in reaching such a classification decision was so flawed as to constitute a denial of due process. The Tribunal has, in *Tay Sin Yan*, Decision No. 3 [1994], para. 30, announced the governing principles for decision in a case such as this:

"The grading of positions is a matter of Bank management in which the Bank exercises a discretion. The Tribunal will review such matters only for the purpose of ensuring that the Administration has behaved in a procedurally correct way and that it has not reached a substantive conclusion that is not reasonably sustainable. It is not the task of the Tribunal to substitute its own assessment for that of the Bank."

(The Tribunal thereby endorsed the approach of the World Bank Administrative Tribunal in Lindsay, WBAT Reports 1990, Decision No. 92.) The Tribunal has also affirmed that matters of evaluation are "for management as long as its exercise of discretion is not ill-motivated, arbitrary, discriminatory or otherwise vitiated by any other abuse of power," and that the "Tribunal will not review the substance of the exercise of the Management's discretion in relation to the Applicant unless there is evidence that it was so unreasonable that it could only have been arbitrary." (see Lindsey, Decision No. 1 [1992], para. 35)

8. With respect to the substance of the Respondent's job classification decision, the Tribunal cannot find that it was arbitrary, discriminatory, or unreasonable. The Applicant's principal contention is that the work to be performed by an Economics Editor, EDRC-CS, demanded more expertise, initiative and judgment than was reflected in the EDRC job description prepared in August 1994 and submitted the following month to Hay Management Consultants.

9. Yet the EDRC job description was given by the Respondent to the Applicant in August 1994. He took issue with it, and submitted a far more detailed description of his own, which he stated was "based on actual work experience and work activities while in the position in question" and about which he stated that he "is able and willing to provide documentary evidence proving [its] accuracy." Perusal of the Applicant's own position description, prepared in January 1994, shows it to be quite similar to the EDRC job description. The Hay conclusion that both descriptions submitted in September 1994 warranted a similar evaluation and the same classification at Level 3 cannot be characterized as arbitrary or otherwise unfounded.

10. The Applicant, in his pleadings, effectively abandons his own January 1994 job description, which he claims was prepared by him merely to provoke reevaluation and not for submission for formal external assessment, and which he now asserts to have been inadequate and incomplete; he also asserts that the Respondent should have been (or in fact was) aware of this fact. Moreover, he sets forth in his Application yet another description of his work as Economics Editor, EDRC-CS, in comparison to two closely related comparator-positions: Economics Editor, EDEV, and Senior Executive Officer, which new description he asserts to be definitive and to demonstrate a much higher level of initiative and responsibility than do the 1994 descriptions.

11. The Tribunal rules that the Applicant cannot seek relief on the basis of new material which had been made available neither to the Bank at the time of the impugned decision nor to the Appeals Committee.

12. In any event, as noted above, the Applicant unequivocally stated in August 1994 that his January description was based "on actual work experience and work activities", and that in comparison the EDRC description was "not fair, accurate or objective". There is indeed no reason why the Tribunal should give that January 1994 job description -- carefully prepared by the Applicant after months, indeed years, of dispute with the Bank about the need for a current and accurate description -- less weight than the job description set forth here in the Applicant's litigation documents. Moreover, the Tribunal is unpersuaded by the Applicant's attempts to cast doubt upon his ability in the summer of 1994 fully to capture in his proffered job description the demands of the position he had held for the previous five years. These attempts are undermined, among other things, by his own very detailed descriptions in his annual performance reports with respect to his accomplishments in each of the periods under review. Those descriptions are very detailed and apparently thorough, and they are not demonstrably inconsistent with the job descriptions fashioned by both the Applicant and the Respondent in January and August 1994, respectively.

13. Beyond that, there are other indicia that the EDRC job description of August 1994 was reasonably accurate. The Respondent developed that description after consultations with appropriate staff from the division and department where the position of Economics Editor, EDRC-CS, was located. It was expressly endorsed by the people who supervised the Applicant's work while he held that position -- the Head of EDRC-CS from September 1989 until August 1993, and the Chief Economist from May 1992 until March 1994; this endorsement was sought in September 1994, contemporaneous with the submission to Hay of the EDRC job description. Although the Applicant, in summary terms, attempts to cast doubt upon the accuracy and objectivity of his former supervisors' endorsements, his observations are speculative and unsubstantiated.

14. The Applicant also contends that the position of Economics Editor, EDRC, was very similar to two other positions, which should have been used as comparators. One of those positions, the Senior Executive Officer, was, however, not a formally classified position, and had been tailored for particular individuals and discontinued by 1983. In any event, the position appears to have been graded at Level 3, precisely the grade level of the Applicant's position.

15. The other asserted comparator position, Economics Editor, EDEV, appears to involve levels of initiative, judgment and expertise that bring it closer to the Applicant's job as described in his Application than to his own job description of January 1994. To that extent, its use as a comparator in this proceeding is subject to the doubts raised above about the relative accuracy of the Applicant's two descriptions. Beyond that, it was Hay's judgment that the more pertinent comparator position was that of Project Specialist, "a key benchmark position for the Bank." The Project Specialist was a position that, in Hay's judgment, justified more points for Problem Solving and Accountability than did the Applicant's position; those points edged the position of Project Specialist into the lower range of the Level 4 classification.

16. Relying on those same criteria, the Respondent had in 1991 upgraded to Level 4 the position of Economics Editor, EDEV, whose role had shifted "from purely conventional editing of publications and documents for Board review to one that includes evaluation and revision of content of drafts in terms of logic and rationale." In at least three other documents prepared in 1990 and 1991, the Bank distinguished the Economics Editor positions in EDEV and EDRC; in November 1991, for example, it was stated that "the present review [of the Economics Editor, EDEV position] should not affect the classification of the Economics Editor position in the Center Services Unit of EDRC, which is responsible for editing EDRC's publications and is organizationally removed from the positions under consideration."

17. There is no evidence in the record to warrant the conclusion that Hay's use of the Project Specialist position as comparator was arbitrary or unreasonable, or that the Respondent's conclusion that the Applicant's position should be classified lower than the Project Specialist (and the Economics Editor, EDEV) was an abuse of discretion. In Snyder, WBAT Reports 1993, Decision No. 135, the World Bank Administrative Tribunal reached the same conclusion on strikingly similar facts, in a case in which the Applicant claimed that her editorial responsibilities warranted a grade level 20 or 21 position as Editor rather than a grade level 17 position as Editorial Assistant.

18. Less need be said with respect to the Applicant's contention that the process of deciding upon his job description, classification and level evaluation was flawed and constituted a denial of due process. The Respondent furnished the Applicant with the EDRC job description, in advance of submitting it for evaluation by Hay, and the Applicant objected and furnished his own job description which was also submitted to Hay. The Applicant, curiously, challenges this

procedure as unorthodox and irregular. But the situation of the staff member complaining about the lack of any job description (while the Bank was relying upon a job description from more than ten years earlier) appears itself to have been out of the ordinary. It was not unreasonable for the Bank to tailor an ad hoc arrangement designed to assure that an informed external evaluator would provide an objective job evaluation and classification. In any event, the advance consultation with the Applicant and the submission of his own job description (particularly when it was on an anonymous basis, without attributing either of the two to him or to the Bank) can hardly be said to have been unfair to the Applicant or to have caused him injury.

19. The Applicant also makes vague charges directed against the impartiality of Hay Management Consultants, rooted in preexisting business and social relationships with the Bank and its officials. These can only be characterized as speculation. Hay's reputation and experience -- and particularly the fact that it was fully familiar with the Bank's job evaluation system, having in 1981-82 designed and implemented that the system -- made it a natural person to consult on such specialized matters. Although the Applicant contends that the Respondent had a duty to consult with him as a condition to retaining Hay to evaluate his position, there was no obligation to do so and the Applicant himself requested no participation in the selection of the Bank's "external reviewer."

20. The Tribunal has considered the Applicant's other contentions about flawed procedures in the Respondent's retention of Hay and in Hay's conduct, and has found them similarly unpersuasive.

Decision:

For these reasons the Tribunal unanimously decides to dismiss the Application.