

## Decision No. 182

A,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 15, 1996, by A against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of F. Orrego Vicuña (a Vice President of the Tribunal) as President, Thio Su Mien and Bola A. Ajibola, Judges. The usual exchange of pleadings took place. The case was listed on September 30, 1997.

### RELEVANT FACTS

2. This is an appeal by the Applicant to the Tribunal from the decision of the Pension Benefits Administration Committee (PBAC) denying the disability pension applied for by the Applicant under Section 3.4(a) of the Staff Retirement Plan of the Bank. This section provides:

A participant ... shall be retired on a disability pension if one or more physicians designated by the Administration Committee certify, and the Administration Committee finds, that the participant was then totally incapacitated, mentally or physically, for the performance of any duty with the Employer which he might reasonably be called upon to perform and that such incapacity is likely to be permanent.

3. On May 31, 1996, the PBAC decided that the Applicant was not entitled to the disability pension and so notified the Applicant on June 3, 1996. The Applicant appealed to the Tribunal on November 15, 1996 pursuant to Section 10.2(f) of the Staff Retirement Plan. This section provides that the decision of the PBAC

shall be conclusive and binding on all persons concerned, subject to the appeal of the decision to the World Bank Administrative Tribunal.

4. The power of the Tribunal under Section 10.2(f) is very broad and allows for the examination of all elements of fact and law as well as of procedural fairness and transparency. As stated by the Tribunal in *Courtney (No. 2)*, Decision No. 153 [1996], para. 30:

The Tribunal may examine (i) the existence of the facts, (ii) whether the conditions required by the Staff Retirement Plan for granting the benefits requested were met or not, (iii) whether the PBAC in taking the decision appealed has correctly interpreted the applicable law, and (iv) whether the requirements of due process have been observed.

5. In the present case, the Tribunal has considered both the jurisdictional issue and the merits so as to determine whether the Applicant is entitled to a disability pension.

### JURISDICTIONAL ISSUE

6. The Respondent raised first a jurisdictional objection that the appeal was untimely because it was filed five months after the notification of the PBAC decision and not within the 90-day period prescribed by Article II of the Statute of the Tribunal. In the Respondent's view, the application should have been filed at the latest by September 3, 1996, but it was only filed on November 15, 1996 and hence it is time-barred.

7. The Respondent therefore applied to the Tribunal, on January 15, 1997, to separate the jurisdictional issue from the merits of the case. The Tribunal found that the jurisdictional issue was so closely inter-linked to the

merits of the case that any determination of that issue might involve the determination of the merits of the case. Consequently, the Tribunal did not agree to the Respondent's application for separation.

8. On the question of the timeliness of the application, the Applicant contended that her failure to file her appeal to the Tribunal within the statutory time-limit was caused by an exceptional circumstance and was therefore not time-barred. This exceptional circumstance was related to her illness and the long history of severe depression and psychological disorders dating back to age eleven.

9. The Respondent contended that the Applicant's illness did not constitute an exceptional circumstance for waiver of the 90-day rule. In particular, the Respondent argued that during the summer and fall of 1996, the Applicant was sufficiently well to participate in the presentation of her case to the Appeals Committee challenging her termination on the ground of redundancy.

10. In order to determine the jurisdictional question the Tribunal has looked into the question of the illness of the Applicant and has examined her medical records. It has reviewed the medical reports placed before the PBAC, including the report of the PBAC's Medical Advisor ("the Medical Advisor"). While it is true, as the Respondent argued, that the Applicant participated in the proceedings before the Appeals Committee, the Tribunal notes that her replies were mostly limited to "yes" or "no." The Tribunal has concluded that the Applicant's medical condition is such as to constitute an exceptional circumstance and hence it does not accept the objection to jurisdiction.

### CONSIDERATION OF THE MERITS

11. The Tribunal turns now to the merits of the case. The question whether the Applicant is entitled to a disability pension turns on the interpretation of Section 3.4(a) of the Staff Retirement Plan. Under this section, the Applicant's "incapacity" has to be (i) "total" "for the performance of any duty with the Employer which [s]he might reasonably be called upon to perform" and (ii) "likely to be permanent."

12. The Tribunal notes that there is no disagreement between the parties concerning the existence of the Applicant's illness. What is in dispute is the conclusion arrived at by the PBAC. In this respect, the Respondent has argued that the PBAC relied, among other things, on the view of the Medical Advisor who concluded that while the Applicant "probably is presently incapacitated from performing certain tasks ... this incapacity is unlikely to be permanent." The Tribunal held in *Courtney (No. 2)* at para. 33:

Disability must first be total and, secondly, likely to be permanent (that is, not transitory) and both elements are related to any duty that the participant might reasonably be called upon to perform. The standard of reasonableness does not require that the participant should continue to be able to do exactly what he had been doing. If a staff member, for example, is unfit to travel but is capable of performing duties at headquarters which are compatible both with his experience and the Bank's needs, then it cannot be concluded that he is totally and permanently incapacitated for any duty that he is reasonably called upon to perform and the requirement of the Retirement Plan is not met.

13. In *Courtney (No. 2)*, the Applicant's disability was not regarded as total because although it precluded him from continuing to travel for the Bank as part of his employment, it did not prevent him from performing other assignments that required no such travel. The test here is whether the Applicant is capable, notwithstanding her illness, of performing other duties which the "Employer" may "reasonably" require of the Applicant and which are compatible both with her experience and the Bank's needs. The medical record evidences, however, that the Applicant cannot perform any duty comparable to those of her former position with the Employer.

14. The Tribunal will next examine the issue whether the Applicant's incapacity is likely to be permanent. The Applicant in her application relied on the reports of four medical specialists in psychiatry and other disciplines related to her illness (collectively "the Medical Reports"). This includes particularly the report of Dr. X who treated the Applicant in 1990 and who monitored her treatment periodically. The PBAC was advised by the Medical Advisor who reviewed the Medical Reports. It is to be noted that the Medical Advisor at no time

examined the Applicant. The need for a guarantee of procedural fairness and transparency in the proceedings and decision-making arrangements of the PBAC has already been noted by the Tribunal in *Shenouda* (Decision No. 177 [1997], paras. 36-37).

15. The Medical Advisor in his report to the Chief, Actuarial and Pension Benefits Division, dated March 29, 1996 concluded that the Applicant “probably is presently incapacitated from performing certain tasks on a sustained basis because of her psychologic reaction to the loss of her position at The World Bank.” He opined that the treatment of the Applicant’s illness would functionally restore her work capability and he expressed the view that it is not expected that the Applicant “will be permanently incapacitated for any job that The Bank might reasonably ask of her.”

16. In the view of the Tribunal, the PBAC’s conclusions cannot be sustained in the light of the said Medical Reports, particularly in the following respects:

(i) They fail to take sufficient account of the fact that the Applicant had suffered from severe depression since childhood. In 1992, Dr. X concluded that she had a “severe psychiatric condition.” The underlying cause of the Applicant’s illness is a long-standing one and the Medical Reports do not show that this problem has been eradicated or improved by treatment.

(ii) The conclusion that she is not expected to be permanently incapacitated for any job that the Bank might reasonably ask of her seems to be based on the Medical Advisor’s statement that “her psychological state is improving. She is said to be coping better with her job-related resentment.” However, that statement of improvement is made in relation to a person who is in “acute crisis.” Indeed, according to the Medical Reports “at best she has not regained her baseline level of functioning prior to the 1988 incidents and at her worst remains depressed ... volatile and withdrawn.” It may be inferred from the above that her mental condition is so abysmal that the improvement is such as to only enable her to cope with daily living and is a far cry from any ability to do any work and more particularly work compatible with her training and experience.

17. In light of such a long history of severe depression and psychological disorders, which seemed to have deteriorated with the years, the Applicant may be regarded as totally incapacitated for the performance of any duty with the Bank which she might reasonably be called upon to perform and such incapacity is “likely to be permanent.” It must be noted that Section 3.4(a) does not say that such incapacity must be permanent but only “likely” to be permanent. The test is confirmed by Section 3.4(d) of the Staff Retirement Plan which empowers the Bank to terminate the disability pension on medical examination or other satisfactory evidence that the incapacity of a retired participant has wholly ceased or that he or she has regained the earning capacity which he or she had before the disability.

18. Based on the said Medical Reports and in light of the long-standing depression and the continuous deterioration of her medical condition, it is unlikely that the Applicant would ever function effectively in another job in the Bank which is similar to the one which she held. She is thus totally incapacitated and such incapacity is likely to be permanent.

19. In light of the foregoing the Tribunal concludes that the Applicant is entitled to the disability benefit.

## DECISION

The Tribunal unanimously decides that:

- (i) the decision of the Pension Benefits Administration Committee of May 31, 1996 is overruled;
- (ii) the Applicant is entitled to disability pension benefits under the Staff Retirement Plan; and
- (iii) the Respondent shall pay the Applicant legal costs in the amount of \$5,000.

Francisco Orrego Vicuña

/S/ Francisco Orrego Vicuña  
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé  
Executive Secretary

At Washington, D.C., November 18, 1997