



World Bank Administrative Tribunal

2012

Decision No. 468

**AS (No. 2),
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**AS (No. 2),
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Francis M. Ssekandi, and Ahmed El-Kosheri.
2. The Application was received on 30 December 2011. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant requests that the Tribunal “interpret and clarify the term ‘net of taxes’” in its award of compensation in *AS*, Decision No. 416 [2009].

FACTUAL BACKGROUND

4. The Applicant, a U.S. citizen, was an Extended Term Consultant (“ETC”) in the Department of Institutional Integrity (“INT”) between January 2005 and January 2007. She was one of a group of 16 current and former staff members of INT who brought claims against the Bank contesting decisions taken by the Bank in August 2008 not to award the all of the relief recommended by an INT Staff Grievance Panel Review.
5. In *AS*, the Tribunal upheld the Applicant’s claims against the Bank and ordered that:
 - (i) the Bank shall pay the Applicant \$30,000, net of taxes, as compensation for the reasons set out in paragraphs 29 to 34;
 - (ii) the Bank shall pay the Applicant \$50,000, net of taxes, as additional compensation for the established claims of retaliation;

- (iii) the Bank shall pay a contribution of \$25,000 towards the Applicant's attorneys' fees; and
- (iv) all other claims are dismissed.

6. In 2010, the Applicant received the compensation and attorneys' fees from the Bank as ordered by the Tribunal, totaling \$105,000. In addition, the Bank paid the Applicant a tax allowance in respect of the Tribunal award of \$41,440 in 2010 and \$3,611 in 2011, a total of \$45,051. However, based on the calculations of her certified public accountant ("CPA") which she provided to the Bank, the Applicant contends that as a result of the Tribunal award and tax allowance received from the Bank, her 2010 tax liability increased by \$53,375. Following lengthy discussions, the Applicant and the Bank continue to disagree over the nature of the payment due to the Applicant so that she can rightly be said to have received her Tribunal award "net of taxes."

THE CONTENTIONS OF THE PARTIES

The Applicant's main contentions

7. The Applicant argues that as a former ETC she was not entitled to a tax allowance on her salary, but rather a "gross-up" pursuant to Staff Rule 6.04, paragraph 6.01 ("Special Provisions for Staff Members Holding Short Term Consultant, Short Term Temporary, Extended Term Consultant, and Extended Term Temporary Appointments"). She argues that as an ETC, she was not in the same position as a staff member eligible for a tax allowance, and contends that it would be consistent with Staff Rule 6.04, paragraph 6.01, for a gross-up, rather than a tax allowance, to be applied to her "net of taxes" Tribunal award. She further submits that for the Tribunal award to be truly net of taxes it must include both (1) a credit for the total amount of tax liability in respect of the award and (2) an amount to offset the additional tax liability that is incurred based on her receipt of the tax allowance itself.

The Bank's main contentions

8. The Bank argues that as a former ETC, the Applicant was a Bank staff member and there is no justification for not applying the Bank's tax allowance system to Tribunal awards. The Bank refers to Staff Rule 1.01, which states: "Staff Member means a person holding an appointment provided for in Rule 4.01," and to Staff Rule 4.01, paragraph 2.01(h), which refers to ETCs as a category of staff member. The Bank also refers to the Applicant's Letter of Appointment by which she accepted her "appointment to the staff of the World Bank."

9. The Bank's view is that the Tribunal award constitutes compensation within the meaning of Staff Rule 6.04 ("Tax Allowance"). Staff Rule 6.04, paragraph 1.03, defines compensation as "salary, allowances (other than the tax allowance), and other payments to ... a staff member made by the Bank Group ... which are subject to income taxation or social security taxation applicable to the staff member." Staff Rule 6.04, paragraph 3 ("Average Deductions Tax Allowance") provides that "[s]ubject to Section 6 of this Rule, all staff members who are U.S. citizens and whose Bank Group compensation is paid net of taxes and who incur U.S. income taxes on Bank Group compensation may apply for a tax allowance computed under this section."

10. The Bank refers to the By-Laws of the International Bank for Reconstruction and Development (as amended through September 26, 1980), Section 13(b), and Principle 6(g) of the Principles of Staff Employment and submits that it is long-standing policy that a tax allowance paid to staff members must be "reasonably related to the taxes they pay on such compensation." The Bank states that the methodology used in calculating the tax allowance, which is set out in Staff Rule 6.04, has been reviewed and upheld by the Tribunal in *de Merode*, Decision No. 1 [1981], *Lamson-Scribner*, Decision No. 32 [1987] and *Richardson*, Decision No. 208 [1999].

11. The Bank refers in particular to paragraph 70 of *de Merode*, and argues that "reasonably related" does not mean "fully reimbursed" for the actual tax liability, or "made whole" as the Applicant puts it, but requires that reasonable compensation be provided for the "average taxes" paid by an average U.S. taxpayer at the income level of the staff member. The Bank states that, until 1979, its policy was to provide full

reimbursement for taxes paid by staff as a result of World Bank Group compensation, but in 1980, the Executive Directors of the Bank modified the “tax-reimbursement policy” to become a “tax allowance system.” According to the Bank, a full reimbursement approach would leave the Bank “unduly subject to a staff member’s individual financial and tax circumstances which are outside of Respondent’s control.” This is because the Applicant’s actual tax burden “depends on the number of sources and amounts of her outside income as well as her spouse’s income, amounts of losses (if any), her filing status and number of dependents” and “the itemized deductions that Applicant chooses to claim.”

12. The Bank argues that the Applicant’s tax allowance on the Tribunal award was calculated in accordance with Staff Rule 6.04. It explains that its calculations were based on the Applicant’s estimated income for 2010 plus her spouse’s income, and treated the Tribunal award as the Applicant’s “top tranche income” such that the higher marginal tax rates were used in calculating the tax allowance. It then offset the Applicant’s Adjusted Gross Income using the average deductions that U.S. taxpayers are deemed to take (based on a report by a major accounting and professional services firm summarizing average federal income tax deductions); the deduction for state taxes due on the Applicant’s income, including the Tribunal award, which the Applicant was entitled to take as an itemized deduction; and an itemized deduction for the attorneys’ fees which the Applicant had to pay to her lawyer. The Bank points out that, in the course of lengthy discussions between the Applicant and the Bank’s Tax Unit, the Tax Unit suggested that the differences between their calculations and those of the Applicant’s CPA arose because the itemized deductions used in Applicant’s CPA’s calculations were much smaller than the Bank-assumed “average deduction” (which included a deduction for state income tax); that unlike the Applicant’s CPA, the Bank did not include Alternative Minimum Tax in its calculations; and that unlike the Applicant’s CPA who had selected her highest estimate for tax liability on the tax allowance itself, the Bank had used a “customized spreadsheet to calculate the exact amount of tax allowance to cover the tax gross-up.”

13. The Bank says further that to base the tax allowance on Applicant’s actual tax liability as calculated by the Applicant would: (i) be contrary to the tax allowance policy laid out in Staff Rule 6.04, the Principles of Staff Employment and the By-Laws which

only require that the tax allowance is reasonably related to the mandatory tax liability of a staff member; (ii) remove the incentive for the Applicant to minimize her tax liability; and (iii) create inequality between staff members whose tax allowance would vary greatly depending on their independent financial resources.

14. The Bank further argues that Staff Rule 6.04, paragraph 6.01, relied on by the Applicant, does not support her claim that her award should be grossed up because it pertains only to the calculation of the gross daily or hourly rate based on which a taxable consultant or temporary is paid and does not envision grossing up one-time payments of compensation arising from a Tribunal award. The Bank contends that the tax allowance system is a more appropriate and sophisticated approach, and accords with the Bank's long-standing policy.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

15. The Tribunal finds that, as an ETC, the Applicant was a staff member of the World Bank as made clear by Staff Rule 4.01, paragraph 2.01 ("Appointment") and confirmed by the terms of her Letter of Appointment.

16. The Tribunal agrees with the Bank's contention that Staff Rule 6.04, paragraph 6, which provides for gross compensation to be paid to certain categories of staff member upon whom income tax is imposed, applies only to daily or hourly fees, and not to Tribunal awards. That paragraph states that "[t]he amount of gross compensation will be the gross amount paid or which would have been paid ... for the performance of the same or similar duties." This approach cannot have been conceived with Tribunal awards in mind. Whereas a grossed up payment for the performance of duties can be derived by comparing one job against another similar job that is paid gross, no equivalent comparison can be made for the award of an international administrative tribunal of the lump-sum type in the Applicant's case. It therefore seems plain that Staff Rule 6.04, paragraph 6 applies to daily or hourly fees, but not to other forms of compensation that are not based on the "performance of ... duties."

17. Correspondingly, the Tribunal agrees with the Bank that a Tribunal award comes within the definition of compensation in Staff Rule 6.04, paragraph 1.03(a), specifically

the words “other payments to or for the account of a staff member made by the Bank Group.” The tax allowance provisions set out in Staff Rule 6.04 therefore apply to Tribunal awards.

18. Principles 6.1(c) and 6.1(d) of the Principles of Staff Employment are clear that the basic objectives of the Bank’s compensation policy include providing “levels of compensation that are equitable internally” and achieving this objective “with due regard to cost, bearing in mind the responsibility of the Organizations to their member countries.” As the Bank also points out, section 13(b) of the By-Laws of the International Bank for Reconstruction and Development and Principle 6.2(g) of the Principles of Staff Employment confirm that staff members are generally entitled to receive a tax allowance that is “reasonably related” to the taxes required to be paid by them on those incomes.

19. The Tribunal considers that the effect of applying the tax allowance system to Tribunal awards is equitable internally and has due regard to cost. While ensuring that staff members subject to taxation equitably receive a tax allowance reasonably related to their tax liability as required by long-standing Bank policy, the tax allowance system reduces the Bank’s exposure to the effects of a staff member’s individual tax circumstances (such as income they receive from sources other than the Bank or their decision not to claim certain tax deductions).

20. Accordingly, the Tribunal is satisfied that the Bank correctly applied the tax allowance system to the Applicant’s Tribunal award in *AS*.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 27 June 2012