

Decision No. 41

Godwin Agodo,
Applicant

v.

International Bank for Reconstruction and Development,
International Finance Corporation,
International Development Association,
Respondents

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received June 30, 1987, by Godwin Agodo against the International Bank for Reconstruction and Development (the Bank), the International Finance Corporation (IFC), and the International Development Association (IDA). The Tribunal decided that oral proceedings requested were unnecessary and should not be ordered. After the usual exchange of pleadings the case was listed on October 1, 1987.

2. Several procedural decisions were taken in this case:

(i) Since the Applicant's application was submitted with fourteen other applications relating to similar subject matter, including the application of the World Bank Staff Association, the Applicant submitted in explanation of his application a consolidated memorandum covering all fifteen cases. The Respondents objected to the consolidation of the cases. The President ordered that the cases not be consolidated and that legal memoranda be submitted by each Applicant in each case separately but that "in order to economize on documentation, when identical legal arguments are made and corresponding annexes are filed in more than one case, cross-references in an individual application to arguments made and annexes filed in another application which has been submitted on the same date, are acceptable."

(ii) In view of the Applicant's request for expedited hearing of his case and the Respondents' willingness "to discuss mechanisms for expediting" the case the President shortened the time limits for the submission of pleadings and modified the application of the relevant Rules with a view to having the case decided at the next session of the Tribunal.

(iii) In response to the Applicant's request for provisional measures the Tribunal, considering that the situation was not urgent in this case, decided not to take any action in regard to that request.

The relevant facts:

(a) The background of the reorganization:

3. The general facts relating to the reorganization are as stated in paragraphs 3 to 42 of Decision No.40.

(b) The particular facts of the case:

4. The Applicant, a Ghanaian national, has been employed since 1981 as an Accounting Assistant by the IFC and was elected by his unit at the IFC to be a staff Delegate to the World Bank Staff Association. Currently he serves on the Executive Committee of the Staff Association.

The Applicant's main contentions:

5. The Applicant makes the same general contentions as were made by the Applicant in Decision No.40 and

which are stated in paragraphs 43 to 63 of that decision.

6. Further, the Applicant contends in his application that:

- (a) as a member of the Executive Committee of the Staff Association, he has standing to bring this action, because there was a violation of his right to associate arising from the Bank's failure before Staff Rule 5.09 was formulated to engage in meaningful consultations with the Staff Association, as required by Staff Principle 10 and Staff Rule 10.01, with the result that there has been a direct injury to his conditions of employment;
- (b) he has standing to bring this action in a representative capacity for the same reasons that the Staff Association has such capacity in its action and because, as a member of the Executive Committee of the Staff Association, he was requested by the Delegate Assembly of the Staff Association to initiate the action on behalf of all staff members affected by the reorganization; and
- (c) because of the exceptional circumstances of the case the requirement that internal remedies should be exhausted should be waived.

7. In his reply the Applicant additionally contends that:

- (a) he suffered a diminution of essential due process rights as an employee of the Bank; and
- (b) he is not bringing this action as a member of the Executive Committee of the Staff Association but as an individual staff member. The fact that he is a member of the Executive Committee of the Staff Association only adds to the harm suffered by him, because the Bank's failure to consult directly impeded him in the performance of his duties as a member of the Executive Committee.

8. The Applicant seeks the following relief:

- (i) An order granting the following interim measures to be effective as of May 19, 1987, and until the Tribunal renders a final decision:
 - (a) suspension of the Bank's efforts to obtain releases or waivers or in any other manner implement paragraph 12.01 of Staff Rule 5.09; and
 - (b) holding in abeyance the enforcement or use by the Bank in any way of releases or waivers given or signed by Bank staff pursuant to acceptance of any Separation Package offered by the Bank in the course of implementing its 1987 reorganization which is targeted to be completed, so far as termination of employment contracts is concerned, by September 30, 1987.
- (ii) Consideration of this application on its merits on an expedited basis by convening a special plenary session, as provided for in Rule 5(2) of the Tribunal, or forming a panel to consider this case, as provided for in Article V of the Statute and Rule 6 of the Tribunal.
- (iii) A declaration that the Bank, during the reorganization and particularly with regard to the preparation of Staff Rule 5.09, has not observed its obligation to engage in effective and meaningful consultations with the staff through their representative, the World Bank Staff Association, concerning matters affecting staff employment conditions.
- (iv) An order that the Bank suspend to the extent necessary the application of Staff Rule 5.09 until modified in a manner that will ensure selection of qualified staff, and by implication termination of staff, on the basis of objective criteria, including detailed position and skills descriptions made known to staff, in a process designed to be free from prejudice, favoritism and discrimination.
- (v) An order that the Bank revise the scope and availability of the Separation Packages as required to remove elements of discrimination and retroactive prejudice against staff members, including, but not limited to, provision for eligibility of staff at grade levels 26 and above for the Standard Separation Package, availability of the Enhanced Separation Package's increased payments for length of service to all staff who have accrued the necessary service, and extension of tax reimbursement to all staff who are subject to tax on receipt of payments under the Separation Packages.
- (vi) An order that the Bank engage in meaningful and effective consultation with the Staff Association for the

purpose of preparing appropriate amendments to Staff Rule 5.09 to correct the deficiencies noted in sub-paragraphs (iv) and (v) above.

(vii) An order that paragraph 12.01 of Staff Rule 5.09 be rescinded.

(viii) An order that the Bank cease and desist from any attempts to implement paragraph 12.01 of Staff Rule 5.09, or to obtain releases and waivers from individual staff members who are voluntarily or involuntarily leaving the service of the Bank as a result of the reorganization.

(ix) An order that the Bank make available to the staff the 1987 reorganization Separation Packages without requiring or implying a release of claims against the Bank or waiver of the right to review administrative decisions, including access to this Tribunal.

(x) An order that the Bank reimburse the Applicant for all fees, costs and disbursements incurred by the Applicant in connection with this application, including reasonable attorney's fees.

The Respondents' main contentions:

9. The action against IFC should be dismissed because IFC was not involved in the reorganization. The action against the Bank and IDA should be dismissed, because the Applicant has no contract of employment with either of these institutions.

10. The Applicant does not have standing to bring a claim on behalf of staff members other than himself or on the basis of his membership of the Executive Committee of the Staff Association. Issues relating to the adequacy of consultation can be raised only by a staff member who has been aggrieved by the particular effect Staff Rule 5.09 has on him. The Applicant has not suffered any harm resulting from the reorganization.

11. The Applicant, while purporting to bring a claim on behalf of himself as well as others, neither contests individual decisions adversely affecting him nor requests individual relief calculated to make good the damage allegedly suffered, but instead requests relief of a general declaratory nature applying to all staff regardless of their personal circumstances. Such declaratory relief is not provided for by the Statute of Tribunal.

12. For the same reasons that the Applicant does not have standing to bring this action in a representative capacity he does not have standing to pursue internal administrative review and appeal.

13. The Applicant has in no way suffered a diminution of essential due process rights as an employee of the Bank, because his access to internal grievance mechanisms as well as to the Tribunal has not been compromised, he has not been confronted with the prospect of releasing his claims against the Bank in exchange for any separation package and he has been selected for a position at the same grade as he occupied previously.

14. The reorganization reflects a proper exercise of discretion, good faith, a proper consideration of the relevant facts, careful study of the proposed changes and the adoption of safeguards to avoid unnecessary or excessive harm to the staff. It was undertaken far from hastily. The formulation and implementation of the reorganization are consistent with the Bank's Articles of Agreement, the Principles of Staff Employment and the principles enunciated by the Tribunal in paragraph 31 of the de Merode decision.

15. The Bank's consultations with the staff and representatives of the Staff Association not only fully complied with Principle 10 and Staff Rule 10.01, but because of their frequency and the involvement of the Staff Association representatives in all aspects of the implementation process, went far beyond the requirements of the relevant provisions of the Principles of Staff Employment and of the Staff Rules. The principle of consultation was not infringed because Bank management decided to adapt the process followed for the adoption of Staff Rule 5.09 to the circumstances and to decide that it was reasonable to provide a period of less than a week for consultation.

16. Paragraph 12.01 of Staff Rule 5.09 does not constitute a unilateral change in an essential, or non-essential,

condition of employment. A settlement and release does not amount to a deprivation or denial of administrative or judicial remedies. The release of claims is an integral element of both separation packages. It is agreed to by departing staff members in exchange for generous benefits and payments. Concerned staff may decline to accept either of the two separation packages and may choose to leave the Bank under the provisions of Staff Rule 7.01 which does not involve any release of claims. The Tribunal has in three decisions rendered by it upheld the general validity of releases of staff members' claims.

17. The decision to pay a tax allowance only to the recipients of severance payments who previously had received a tax allowance in respect of their salary does not discriminate in an unjustifiable manner among staff members of different nationalities or residence. Since no staff members have yet requested a tax allowance on severance payments which has been denied by the Bank, such a complaint is not ripe for consideration by the Tribunal.

18. The Applicant should not be awarded costs, because he has not specified or substantiated expenditures and, even if a party wins, he is not entitled to costs save in exceptional circumstances.

Considerations:

19. Article II, para. 1 of the Statute of the Tribunal provides:

The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member.

Paragraph 3 of Article II defines "member of the staff" to include "any current or former member of the staff of the Bank Group." The Applicant contends that he is a "member of the staff" who may properly file an application with this Tribunal challenging the Respondent's flawed rules providing for the comprehensive reorganization of the staff, particularly Staff Rule 5.09. He asserts, first, that in his capacity as a member of the Executive Committee of the Staff Association, he "has standing to bring this application as a representative of the staff members for the same reasons which justify the representative standing of the Staff Association." He also asserts that he has standing to allege that the Bank's actions in the context of the reorganization constitute a non-observance of his own contract of employment. The Respondent raises a number of procedural bars to this proceeding, the sustaining of any of which would warrant the dismissal of the application.

20. The considerations that the Tribunal finds dispositive of this case are (i) that the Applicant has no standing to file an application in a representative capacity alleging non-observance of another staff member's contract of employment; and (ii) that the Applicant, as a staff member, has failed to identify a particular decision by the Respondent that has adversely affected him, and that he is therefore seeking relief in the nature of an advisory opinion which is beyond the power of the Tribunal.

21. To the extent that the Applicant asserts standing to file this application by virtue of his position as a member of the Executive Committee of the Staff Association, acting on behalf of Association members, the Tribunal finds its decision in World Bank Staff Association, Decision No.40 [1987], to be controlling. It is true that in this case, unlike the cited case, the application has been filed by an individual who indisputably falls within the definition of a "member of the staff" empowered by Article II, para. 1 to file an application with this Tribunal. Nonetheless, the reasons that warrant denying the Staff Association standing to assert claims of individual staff members dictate the same conclusion when one staff member purports to assert claims of injury to other staff members.

22. Article II, para. 1 of the Statute expressly limits the kind of claim that a staff member is able to present to the Tribunal. The staff member must allege non-observance of the employment contract or terms of appointment "of such staff member," that is, of the staff member filing the application. An application asserting a violation of some other staff member's contract of employment is clearly inadmissible under this provision. It is, indeed, an established principle of adjudication that claims for redress are properly to be asserted only by the injured party, lest there be gratuitous and vexatious litigation of claims of dubious and speculative merit. As the

Tribunal stated in the World Bank Staff Association case, if particular individuals allege that the Respondent has taken decisions that are based upon a non-observance of their own contracts of employment, these applications will be receivable by the Tribunal. Four such applications have in fact been filed and listed at the same time as this case and that presented by the Staff Association. That is the appropriate procedure for aggrieved staff members to utilize.

23. That is also the procedure that was in fact employed in de Merode, Decision No 1 (1981), upon which the Applicant relies in support of his assertion of standing to present the claims of fellow staff members. In de Merode, the applications filed with the Tribunal alleged non-observance of the applicants' own contracts of employment or terms of appointment. The impact that those applications had upon the rights of other staff members stemmed not from any statutory right of the applicants but rather from a stipulation to which the Respondent was a party, stating that in the interests of economy of adjudication staff members similarly situated would be given the benefit of any Tribunal decision favorable to the particular applicants. Such a stipulation was necessary only because the individual applicants were not entitled to assert the salary claims of their fellow staff members.

24. The Applicant also alleges non-observance by the Respondent of his own contract of employment and terms of appointment. He claims that the failure of the Respondent to engage in full consultation with the Staff Association in formulating Rule 5.09 resulted in his views and concerns going unrepresented, his inability to fulfill his duties as a member of the Executive Committee of the Staff Association, and a violation of his right to associate with his colleagues. He claims that Staff Rule 5.09 constitutes an improper unilateral change in employment conditions "with a potential for causing excessive and unnecessary harm to him and the staff generally," and that the right of access to the Tribunal has been "challenged and imperiled" by the waiver provision in paragraph 12.01 of Rule 5.09.

25. The Applicant's contentions can be characterized as a challenge to the procedures employed in promulgating Rule 5.09 and to the content of that Rule, particularly paragraph 12.01 requiring that staff members who terminate their employment with the Bank as a result of the reorganization and who choose certain compensation packages must release preexisting claims and waive access to the Tribunal. The Applicant does not, however, contend that Rule 5.09 has served as the basis for some particular decision of the Respondent that adversely affects his own working conditions or status. The Respondent therefore contends that the Applicant is in effect requesting that the Tribunal provide an advisory opinion on the general validity of the staff rule, and that the Tribunal lacks the power to do so.

26. The Statute of the Tribunal lends support to the Respondent's contention. Article XII of the Statute, in pertinent part, provides:

1. If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the President of the respondent institution, within thirty days of the notification of the judgment, decide, in the interest of such respondent, that the applicant shall be compensated without further action being taken in the case

4. The filing of an application shall not have the effect of suspending execution of the decision contested.

27. It is obvious from these provisions that the Statute contemplates the making by the Respondent of a "decision" that adversely affects the applicant specifically and that will justify "compensation ... for the injury sustained." Rule 7(3) of the Tribunal echoes these provisions; it provides that the applicant's pleas are to set forth "the decisions which the applicant is contesting" and the amount of compensation sought "for the injury sustained."

28. Even apart from these formal texts, it is significant to note that at the time the Bank was contemplating the creation of the Administrative Tribunal, in November 1979, the draft of a statute that was proffered by the Staff Association expressly proposed that "Upon petition by the President of the World Bank or by the World Bank Group Staff Association, the Tribunal may, at its discretion, render an advisory opinion on the validity of

administrative action which the World Bank Group or any of its constituent organizations proposes to take.” That proposal was not incorporated in the Statute of the Tribunal as ultimately adopted. The Bank’s failure to endorse the November 1979 proposal of the Staff Association when adopting the Statute of the Tribunal manifests a refusal to countenance the assertion before the Tribunal of claims of a premature and generalized nature, and an intention to have the Tribunal rule only upon past administrative action affecting the rights of specific members of the staff.

29. Although the Applicant, or the Staff Association on his behalf, appears to suggest that the Tribunal has in fact decided other cases involving a generalized challenge to the validity of the Respondent’s policies, any such suggestion is not based in fact. In de Merode, Decision No.1 [1981], for example, the claim asserted in the application was that the Respondent had improperly departed from its policies and practices regarding the computation of staff salaries, and that this resulted in a demonstrable reduction in the salary to which all individual staff members were entitled. In all other cases decided by the Tribunal, the applicant has alleged some detriment to his own status, compensation or working conditions resulting from a specific Bank decision affecting him. Such a claim is in fact presented in four other cases filed and listed along with this one as a result of the Bank reorganization, but no such claim is presented here.

30. Another way to state the defect in the Applicant’s case is that it is premature. The Applicant does not claim that any adverse consequences have been actually suffered by him. Nor does he claim that he has selected any compensation package attendant upon termination of employment which would oblige him to waive any preexisting claims that he might otherwise have for review by the Tribunal. He is indeed asking for an advisory opinion on the validity of Rule 5.09 in the abstract, by virtue of the injury that it might possibly in the future cause to the Applicant or to other members of the staff.

31. Under the circumstances of this case, the Tribunal is not empowered by its Statute or Rules to issue such an opinion. Other international administrative tribunals have reached similar conclusions. For example, in the case of In re Sikka No. 3, ILOAT Judgment No. 622, p. 4 (1984), the Administrative Tribunal of the International Labor Organization was confronted with a complaint challenging an administrative circular amending the staff rules dealing with overtime work. The Tribunal, construing a statutory grant of jurisdiction similar to that in this Tribunal’s Statute, dismissed the complaint. It stated that it, the Tribunal,

hears complaints challenging decisions which are individual acts, not complaints directed against abstract rules of general purport. That its competence is so restricted is evident in particular from Article VIII of its Statute, which sets out the consequences of allowing a complaint. Obviously the article applies only to cases in which an actual decision is challenged. The Tribunal is not on that account precluded from ruling on the validity of any general and abstract rule; but it will do so only by way of exception, viz. when hearing a complaint which challenges an actual decision.

32. The Applicant contends that its attack on the validity of Staff Rule 5.09 can be adjudicated by the Tribunal by means of the issuance of a declaratory judgment which, although not expressly authorized in the Statute of the Tribunal, is a form of remedy that all adjudicatory bodies can issue by virtue of inherent powers. This contention is, however, not relevant to the facts of this case. Even assuming that the Tribunal can issue a decision in the form of a declaratory judgment, the premise underlying any such relief is that the applicant has standing before the Tribunal and that he or she has properly alleged and proved a cognizable violation of his or her own contract of employment or terms of appointment. As the Staff Association itself argues, in its reply in the World Bank Staff Association case, “the power to issue a declaration ... is but a lesser and necessarily included power in the expressly granted authority to grant the remedies of specific performance, rescission and compensation to redress such a violation.” Just as specific performance, rescission and compensation may be issued by the Tribunal only when the Respondent has made a “decision” adversely affecting a staff member, the same is true regarding the issuance of a declaratory judgment.

33. The Tribunal reiterates that its decision not to consider the validity of Staff Rule 5.09 in the circumstances of this case does not mean that the Rule’s validity is forever shielded from the scrutiny of the Tribunal. If the Rule was adopted through improper procedures, or if its general provisions are arbitrary, or if it has been applied in a discriminatory or otherwise improper manner, these defects may indeed be challenged –but only by a staff

member adversely affected by these defects. The Respondent itself concedes: "The Tribunal may, of course, pass judgment on the legality of a rule or regulation but only in the context of an allegation of non-observance of terms of employment of an individual staff member." It also states: "[I]ssues relating to the adequacy of consultations on a given Staff Rule are properly raised only by a staff member who alleges that he has been aggrieved by the particular effect that Rule has on him, and who can relate the harm suffered to the alleged lack of consultation. In addition, Applicant ... has not alleged any harm to himself resulting from the alleged lack of consultations. In fact, he does not allege that he has suffered any harm resulting from the reorganization."

Decision:

For these reasons, the Tribunal unanimously decides that the application be dismissed.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C.F. Amerasinghe

/S/ C.F. Amerasinghe
Executive Secretary

At London, England, October 27, 1987