

Decision No. 250

Margaret Azevedo Amaral,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on March 14 and 15, 2001, by Margaret Azevedo Amaral 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 Robert A. Gorman (President of the Tribunal) as President, A. Kamal Abul-Magd and Jan Paulsson, Judges. The usual exchange of pleadings took place. The case was listed on May 25, 2001.

2. The issue for decision is whether the application must be dismissed because of a failure by the Applicant to exhaust "all other remedies available within the Bank Group," as required by Article II, paragraph 2(i), of the Statute of the Tribunal.

3. The Applicant was appointed to a three-year fixed-term appointment as Secretary, Human Development Network (HDN), Education Team (HDNED), Education Sector Board (ESB, or Board). The dates of her service were to run from December 16, 1996 through December 31, 1999. Her letter of appointment stated, among other things: "Your appointment will terminate at the end of that period unless it is extended or a new appointment is made. The World Bank has no obligation to extend the appointment or to offer a new appointment, even if your performance is outstanding, but it may do so if agreed in writing at the time of the expiration of the appointment."

4. In the Applicant's overall performance evaluation (OPE) for the period January 1, 1998 to March 31, 1999, signed by the Applicant and her supervisor on May 27, 1999, it was expressly noted that the Applicant's contract would not be renewed: "[The Applicant's] Fixed Term contract as ESB Secretary will be completed in December 1999. The Education Sector Board has made the decision to change the requirements and purpose of this position and therefore her specific contract will not be renewed." The OPE pointed out, however, that the ESB had recommended that the Applicant's contract be extended "on humanitarian grounds" until June 30, 2000, to be spent from January 1, 2000 on administrative leave. In the OPE statement, the ESB "wish[ed] [the Applicant] well in all her future endeavors."

5. On September 29, 1999, the Applicant asked her supervisor to request the ESB to reconsider its decision to abolish her position. On October 27, 1999, the Board met and confirmed its decisions to abolish the position held by the Applicant and not to renew her appointment. The Applicant was so informed in an e-mail from her supervisor on November 8, 1999, and on the following day the Applicant acknowledged the e-mail.

6. On November 24, 1999, her supervisor notified the Applicant that one of her significant functions would henceforth be the responsibility of Ms. X, one of her colleagues in ESB; and on December 20, 1999, the supervisor sent an e-mail to the Board (including the Applicant) setting forth the various new assignments beginning January 1, 2000 taking account of the dispersion of the Applicant's former responsibilities.

7. The Applicant received notice on December 2, 1999, from a Human Resources Manager, that her fixed-term contract would come to an end on June 30, 2000, and that she would be placed on administrative leave from January 1, 2000.

8. Some nine months after that notice, on September 5, 2000, the Applicant e-mailed the current and immediately previous Vice Presidents of HDN, alleging that the Applicant's supervisor had unfairly dismissed her and had orchestrated the abolition of her position. The current HDNVP responded, stating that the Applicant's contract had been allowed to expire according to its terms and that she had not been dismissed, and he added that in any event the 90-day time limit had passed for filing an appeal from the Bank's decision not to renew her contract communicated to her on December 2, 1999. The HDNVP also stated that the ESB, in conformity with its earlier decision, did not need a Secretary and was operating without one.

9. On September 29, 2000, the Applicant filed a Statement of Appeal with the Appeals Committee, in which she contested the termination of her employment as Secretary, claiming that the position had not been abolished and that her responsibilities had been given to Ms. X, and also that she, the Applicant, had been harassed by her supervisor. The Appeals Committee concluded that it was without jurisdiction over these claims in view of the Applicant's untimely initiation of her appeal.

10. To the extent that the Applicant challenges here the Respondent's decision to allow her appointment to lapse at the end of the stipulated term – December 31, 1999 as extended by administrative leave to June 30, 2000 – her application must, for the reasons given immediately below, be dismissed for lack of jurisdiction.

11. Article II, paragraph 2(i), of the Statute of the Tribunal provides that no application shall be admissible, except under exceptional circumstances, unless "the applicant has exhausted all other remedies available within the Bank Group." As the Tribunal has previously held: "[W]here an Applicant has failed to observe the time limits for the submission of an internal complaint or appeal, with the result that his complaint or appeal had to be rejected as untimely, he must be regarded as not having complied with the statutory requirement of exhaustion of internal remedies" (*de Jong*, Decision No. 89 [1990], para. 33.) An untimely resort to the Appeals Committee is an example of such failure to exhaust. Staff Rule 9.03, paragraph 5.01, thus becomes pertinent: "A staff member who wishes to appeal an administrative decision to the Appeals Committee must submit the appeal in writing to the Secretariat of the Appeals Committee within . . . 90 calendar days of receiving the written decision"

12. The Tribunal must therefore determine when the Applicant received the written decision of which she is complaining. The Applicant was informed of the Bank's intention not to extend her appointment on several occasions. She was informed in her OPE, signed by her and her supervisor, on May 27, 1999 that her fixed-term appointment was to be completed in December 1999 and that, because of a change in the requirements and purpose of her position her contract was not to be renewed. Later, in response to the Applicant's request for reconsideration, the Board Principals met and confirmed the decision to abolish her position and not to renew her appointment, which the Applicant acknowledged on November 9, 1999. Later in November and also in December 1999, the Applicant was more fully apprised in writing of the reassignment of the various components of her position as Secretary to others employed in ESB. On December 2, 1999, the Applicant learned from a Human Resources Manager that her fixed-term contract would be allowed to come to an end according to the earlier terms already confirmed by the ESB.

13. Confronted with these several notifications from May to December 1999, it was not until September 5, 2000 that the Applicant contacted her past and present Vice Presidents to challenge the abolition of her position and the termination of her employment. And it was not until September 29, 2000 that she presented her case to the Appeals Committee.

14. It is the conclusion of the Tribunal that the Respondent's decision not to extend the Applicant's employment contract was effectively and unambiguously communicated to her on May 27, 1999 in her OPE. Timely filing of her appeal to the Appeals Committee should therefore have taken place by August 25 of that year. Instead, the Applicant took her appeal thirteen months beyond even that date. Even if the effective date of the receipt of the Bank's decision were to be generously interpreted as December 2, 1999, when the Applicant heard from a Human Resources Manager, the deadline for the Applicant to appeal to the Appeals Committee would have been March 1, 2000 – a deadline that passed some seven months before the Applicant's filing.

15. In sum, the Applicant has failed to exhaust her remedies within the Bank in contesting the Respondent's decision to let her fixed-term contract expire according to its express terms.

16. The Applicant in effect acknowledges this, by claiming that her application to the Tribunal contests not the decision against the extension of her fixed-term contract but rather the Bank's alleged failure, contrary to its assertions in 1999, to eliminate her position and to disperse her responsibilities. The Applicant challenges "the assignment of all [her] duties to a consultant [Ms. X], and the conversion of that consultant to an open-ended staff position . . . at the World Bank some time between April and July 2000." The Applicant contends that she learned of the latter developments only in July and August 2000, so that her appeal to the Appeals Committee on September 29, 2000 should be viewed as timely.

17. The Applicant thus points to alleged circumstances arising after the expiry of her active employment on December 31, 1999, for the purpose of extending the period for filing with the Appeals Committee and the Tribunal. Even so, it is the conclusion of the Tribunal that this application must nonetheless be dismissed. The Applicant's claim in substance is that because the duties of the Secretary position were continued after December 31, 1999, she should have been allowed to continue in that post – so that it was an abuse of discretion for the Bank to let her appointment lapse on that date. The Applicant's contention is not so much that the assignment of tasks in early 2000 was in itself wrongful but rather that it confirms her charge that the so-called abolition of her position was manipulated in order that her supervisor could be rid of her.

18. Again, this is a challenge to the Bank's decision not to extend her appointment as Secretary, and it should have been pursued before the Appeals Committee in a timely fashion. The Tribunal has so held in other cases involving similar circumstances, in which the applicant has sought to extend the time for challenging an adverse decision by the Bank, by contesting instead a later communication from the Bank that simply confirmed the earlier one. (*See, e.g., Kehyaian (No. 3)*, Decision No. 204 [1998].)

19. If the Applicant was indeed contesting the assignment of her previous responsibilities to another staff member after the Applicant had left her active service in January 2000, this claim falls outside of the Tribunal's substantive jurisdiction. The Applicant has not demonstrated how such an assignment could be a "non-observance of the [Applicant's] contract of employment or terms of appointment," established in a fixed-term contract in December 1996, as required by Article II(1) of the Statute of the Tribunal.

Decision

For the above reasons, the Tribunal unanimously decides that the application is inadmissible.

/S/ Robert A. Gorman

Robert A. Gorman
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé
Executive Secretary

At London, England, July 23, 2001