



World Bank Administrative Tribunal

2012

Decision No. 467

**BW,
Applicant**

v.

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

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

**BW,
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 first received on 8 December 2011. The Executive Secretary called upon the Applicant to make necessary corrections to the Application pursuant to Rule 7(9) of the Tribunal's Rules, and the Applicant submitted an amended version including an explanatory statement on 13 January 2012.
3. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
4. The Applicant challenges the validity of a Mutually Agreed Separation agreement ("MAS") she signed in 2002 pursuant to which she was precluded from receiving an early unreduced pension at the age of 50. The Bank filed a preliminary objection to the admissibility of the Application. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. The Applicant joined the Bank in January 1991 as a Team Assistant (Level GB) and ended her employment with the Bank as Program Assistant (Level GC) in June 2002, pursuant to the terms of a MAS dated 6 March 2002. Since then, the Applicant has been employed by the Bank on a number of short-term appointments beginning in 2006, and was so employed at the time she filed this Application.
6. The Applicant states that, prior to her separation from the Bank, she endured a difficult relationship with her supervisor in a "hostile work environment." She brought this to the attention of the Bank's Human Resources department. She also requested and participated in a mediation session conducted by the Bank's mediation officer, one

outcome of which was the formulation of a performance improvement plan for her. She states that: (1) she was presented with a MAS in March 2002 and told by Human Resources staff that the offer would be withdrawn if she did not sign it promptly; (2) she received daily telephone calls from Human Resources reminding her to sign the MAS; (3) she was afraid that her employment would be terminated and that she would be left without unemployment benefits; (4) she was being treated by her physician for stress-related hypertension at the time; and most importantly, (5) she was given no “explicit instruction about the [MAS] and its effects on her future livelihood,” but she nevertheless signed it on 7 March 2002.

7. The MAS, which took the form of a memorandum to the Applicant from a Human Resources manager, provides, in relevant part:

1. I wish to confirm the conditions of your leaving the service of the Bank Group effective June 30, 2002, from your position as Program Assistant in ACO under a Mutually Agreed Separation, Staff Rule 7.01, Section 5

...

2. You will remain in regular work and pay status through June 30, 2002, on which date you will leave the service of the Bank with the following conditions:

a) From March 14, 2002 until June 30, 2002, you will be on administrative leave. ... During your administrative leave, you will not be required to report to work, but will continue to accrue your normal Bank benefits such as annual and sick leave.

b) On June 30, 2002, you will receive a Lump Sum severance payment equivalent to 8.80 months’ of your then current monthly net pay

...

e) Any reappointment to the Bank group will be subject to the Staff Rules in effect at the time of any such reappointment

...

j) Attached is a checklist which will assist you in attending to the administrative matters related to your leaving the service of the Bank.

3. In accepting these terms and conditions, you fully and finally settle and release all claims you might otherwise have against the Bank Group arising out of circumstances occurring or decisions taken on or before the date of your acceptance. You understand that the settlement of these claims includes relinquishing of the right to appeal to the Appeals Committee, the Workers' Compensation Administrative Review Panel and the World Bank Administrative Tribunal

...

5. If you have any questions or require clarification concerning the above arrangements, please discuss them with [Ms. X]. Please acknowledge receipt of this letter and indicate your understanding and acceptance of these conditions by signing and returning the attached copy to [Ms. X] ... no later than Thursday, March 7, 2002.

8. The MAS states that a document entitled "Check-out Procedures" was attached to it, but this document is not in the record before the Tribunal.

9. In her Application, filed initially on 8 December 2011, the Applicant requests the "revocation" of the MAS and, having reached the age of 50 in May 2011, she seeks to receive an early unreduced pension as is permitted under certain provisions of the Bank's Staff Retirement Plan ("SRP"). She argues that the Bank denied her due process by presenting her with the MAS, and that the Bank administered a "grab and go – get out" MAS without explaining its ramifications relating to retirement benefits. In addition, she seeks compensation of \$315,000; a "restoration of benefits"; reimbursement of lost wages resulting from an "improperly administered" MAS; and a pension retroactive to the date of the MAS.

THE BANK'S PRELIMINARY OBJECTION

10. The Bank submitted a jurisdictional challenge, contending that the Application is inadmissible as time-barred and because the Applicant has failed to exhaust internal remedies. The Bank refers to the requirements of Article II(2) of the Tribunal's Statute,

pointing out that the Application relates to a MAS executed in 2002, and that there is no record of any grievance filed by the Applicant prior to the present Application, filed in December 2011. The Bank refers to *Gilani*, Decision No. 261 [2002], para. 19, where the Tribunal noted that the “statutory exhaustion requirement is of the utmost importance” because it “ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action, short of ... litigation before the Tribunal” and because “the findings and recommendations of the Appeals Committee greatly assist the Tribunal in promptly and fairly disposing of the cases before it.”

11. The Bank recognizes that Staff Rule 9.01, paragraph 4.14, provides that a “staff member who seeks to challenge the validity of an MOU or settlement agreement ... may bring the claim directly” to the Tribunal, but argues that this rule does not dispense with the requirement that the Application be timely. In this regard, the Bank refers to *Malekpour*, Decision No. 320 [2004], para. 21, where the Tribunal held that the resolution of staff claims “brought many years after the operative event could be seriously complicated by the absence of important witnesses or documents, and would in any event result in instability and unpredictability in the ongoing employment relationships between staff members and the Bank.” The Bank argues that the MAS should not be subject to litigation “ten years after the fact.” The Bank contends that the Applicant “was quite aware of the date of occurrence of the event ... giving rise to her Application” and has herself indicated that date to be February 2002. The Bank notes that the Applicant has not alleged any exceptional circumstances that would justify the Tribunal granting her relief from or suspension of the requirements for admissibility under Article II(2) of the Tribunal’s Statute.

THE APPLICANT’S RESPONSE

12. In response, the Applicant explains her understanding that the rule which allows certain Bank staff to retire at the age of 50 with an unreduced pension applied to her. She claims that she was not informed that she would be precluded from receiving such an early unreduced pension at the age of 50 until shortly after she reached that age in May 2011. She states that, in the latter half of August or September 2011, when she contacted the Bank’s Pension Administration office on the advice of the Staff Association, she was informed for the first time that, in her words: “I would not be able to take my pension early because of the severance payment I received as part of the MAS.” She states that

“without my knowledge, the MAS included a secret, hidden term: that I could not receive my pension at age 50.”

13. The Applicant claims that at the time the MAS was being finalized in 2002, she was repeatedly told that she would be able to receive an early unreduced pension at the age of 50. She names a number of staff members then working in the Pension Administration office, as well as in Human Resources, but who have since left the Bank, that she recalls telling her she would “be able to retire” at the age of 50. She claims that it was “in large part” because of these assurances that she signed the MAS. She says that she

had no way of knowing that I would not be able to get my pension at the age of 50, and every reason to believe I could because that is what I was told ... I had no exit interview when I left the Bank, so I had no knowledge of the pension rules. And nothing in the Staff Rules says that staff members who sign an MAS cannot receive an early pension at age 50.

THE TRIBUNAL’S ORDER FOR THE PRODUCTION OF DOCUMENTS AND INFORMATION AND THE PARTIES’ RESPONSES

14. The Tribunal called upon the Applicant to substantiate her allegations that several Bank staff members told her before she signed the MAS that she would be able to receive an early unreduced pension at the age of 50, and also to produce the original attachment to the MAS (which, as noted earlier, she had not included in her Application). The Tribunal also called upon the Bank to address, with appropriate documentation, the Applicant’s contention that the relevant date for the purposes of Article II(2)(ii) of the Statute of the Tribunal is August 2011 when she alleges that she learned of the “secret, hidden term” rather than March 2002 when she signed the MAS.

15. The Applicant states that she does “not recall having been given a copy of the attachment” in spite of having “previously tried to confirm the availability of such a copy from Human Resources.” She explains that: “At the time of signature, I was informed that the document (check-out list) was not urgent and had nothing to do with the reinstatement policies of the institution,” and asks the Tribunal to order the Bank to

produce the attachment. She mentions the names of various staff members who have “some level of knowledge of the facts” of her situation.

16. The Bank argues that there was nothing secret or hidden in the terms of the MAS. It contends that the Applicant received a severance payment under the terms of the MAS, and the Bank’s pension rules were as clear in 2002 as they are now, requiring that “severance payments must be waived by staff to maintain eligibility for any applicable pension or reappointment.” The Bank argues that, as the Applicant did not waive the severance payment, she was not entitled to receive an unreduced pension at the age of 50, but could receive either a reduced pension at the age of 55 or an unreduced pension at the normal retirement age of 62. The Bank refers to the SRP, which provides that:

3.3 Unreduced Early Retirement Pension.

(a) Except as provided in Section 4.3, a participant who, on or after April 15, 1998, ceases to be a participant before the normal retirement date except by reason of death or disability retirement under the Plan shall be retired on an unreduced early retirement pension if the participant (i) is at least fifty years old or has at least 1,095 days of service, (ii) was on April 14, 1998 either a participant in service (other than service credited pursuant to Article 15), or a participant not in service during a period of leave without pay or external service without pay approved in advance by the Employer; (iii) *has not received a severance payment from the Employer (and has waived any right that may exist thereto) upon termination of employment*; and (iv) has elected to receive the unreduced early retirement pension under this Section. For purposes of this subsection, a “severance payment” refers to any payment that is characterized as a severance payment in Staff Rule 7.01 of the Employer.... (Emphasis added)

17. The Bank contends that, consistent with its policies, the Applicant “must have conveyed her understanding to her (then) manager before the MAS took effect,” and that there was nothing surreptitious about the terms of the MAS. Regarding the Applicant’s claim that she “had no exit interview” when she left the Bank and therefore “had no knowledge of the pension rules,” the Bank refers to the fact that the staff with whom the Applicant claims to have spoken in 2002 have, conveniently for the Applicant, since left the Bank, and argues that the availability of evidence and witnesses is one of the reasons for the statutory requirement of timeliness.

18. The Bank also submits documentation intended to show that the Applicant's claims are untimely. First, it submits a letter from the Manager of the Pension Administration office dated 12 September 2002, which appears to be intended to provide the Applicant with general information about her pension. The letter states, *inter alia*: "(1) Deferred Pension: You may elect to commence payment of your pension between the ages of 50 and 62, in certain cases, with a reduction in your pension." Second, the Bank provides copies of what appear to be annual Cost-of-Living-Adjustment Reports that are sent to, or are available to, all retired SRP participants individually. The Bank argues that the Applicant was notified each year since 2003 of the changes in her monthly pension amount. Each such report, addressed to the Applicant by name and by Universal Personal Identifier ("UPI"), i.e. a unique identification number assigned by the Bank to each of its staff members, states:

Your pension is effective on your normal retirement date, 05/07/2023.
You may elect to advance the effective date of your pension to any date on or after 05/07/2016, at a reduced amount. Your Application for Payment of Pension must be submitted prior to the pension effective date.

19. Third, the Bank produces an undated document entitled "The World Bank Group Staff Retirement Plan," with a number of sections, one of which is "Benefit Information." The document again refers to the Applicant by name and by UPI, and states: "A. "Eligibility for unreduced pension at age 50: No," and "B. If not eligible for A, earliest date for pension to commence: May 7, 2016 at age 55 w/ reduction...May 7, 2023 at age 62 w/o reduction."

20. The Bank therefore submits that the Applicant's claim that she only became aware that she could not receive her pension at the age of 50 in August 2011 is unsustainable.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

21. The Applicant's principal claim is that the MAS is invalid because it was "improperly administered" without "due process." She claims that she was harassed and unduly influenced to sign the MAS, and that the effect of the MAS on her retirement benefits was not explained to her. In this regard, the Tribunal notes that Staff Rule 9.01,

paragraph 4.14, provides that a “staff member who seeks to challenge the validity of an MOU or settlement agreement ... may bring the claim directly to the World Bank Administrative Tribunal.” However, as the Bank points out, paragraph 4.14 does not do away with the requirement that the claims before the Tribunal must be filed in a timely manner.

22. Article II(2) of the Statute of the Tribunal provides that, unless there are exceptional circumstances, an Applicant must file an Application within 120 days after the latest of the following:

- (a) the occurrence of the event giving rise to the application;
- (b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group that the relief asked for or recommended will not be granted; or
- (c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after the receipt of such notice.

23. The Tribunal accepts the Bank’s argument that the Applicant’s claims regarding the validity of the MAS on grounds of due process, duress, harassment or undue influence are time-barred, as the MAS was concluded in 2002 and the Applicant has not shown any basis on which these claims may be considered to be timely.

24. Following the Bank’s preliminary objection, however, the Applicant focuses her claim more directly on the matter of timeliness by arguing that the terms of the MAS — specifically, the effect of the MAS on her ability to receive an early unreduced pension at the age of 50 — were not disclosed to her. The Applicant thus seeks to render admissible the claim related to the matter of her pension, by arguing that the date of the occurrence of the event giving rise to the Application should be computed from the date she became aware of the effect of the MAS on her pension, i.e., August 2011, according to her, rather than 2002. The question is therefore when the Applicant became aware, or when she should reasonably have been aware, of the effect of the MAS on her pension rights.

25. The Tribunal has consistently given effect to the terms of agreements such as that at issue in this case. In a number of cases, staff members have requested the Tribunal to invalidate or not give effect to a release clause in a MAS. In rejecting such a request in *Mr. Y*, Decision No. 25 [1985], para. 26, the Tribunal explained:

In an enterprise employing as many staff members as does the World Bank Group, it is inevitable that there will be claims of improper treatment, as witness the appeals to the Appeals Committee and applications to this Tribunal. It would unduly interfere with the constructive and efficient resolution of these claims if the Bank could not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise arrangements, and there might instead be an inducement to be unyielding and to defend each claim through the process of administrative and judicial review. It is therefore in the interest not only of the Bank but also of the staff that effect should be given to such settlements.

26. Accordingly, a compelling case must be presented to the Tribunal by the party asking the Tribunal to invalidate a MAS or not to give effect to its terms. The burden is even higher in cases, such as the present one, where a challenge to a MAS is lodged more than 10 years after the MAS was signed.

27. In this case, the Tribunal finds that the burden has not been discharged by the Applicant. First, the evidence provided by the Applicant as to when she should reasonably have been aware of the effect of the MAS on her pension rights falls far short of any reasonable standard of proof that would lend credibility to her claims. The Applicant has not been able to produce any documents or other evidence (witness evidence, for example) to support her allegations. In view of the seriousness of her situation in 2002 as she perceived it and as she has described it, it was her responsibility to keep track of the effect of important documents she signed — for example, by making pertinent enquires of Bank officials in writing. It is the Applicant's responsibility to substantiate her claims, and she has not done so. Second, the Tribunal notes that the pertinent provisions of the SRP have not changed since 2002, and have always made it clear that severance payments preclude entitlement to an unreduced pension at the age of 50. It is the responsibility of staff members to familiarize themselves with applicable

rules governing their employment, and this clearly includes the SRP. Third, the Tribunal notes that there is no suggestion in this case that the Applicant's eligibility for an unreduced pension at the normal retirement age of 62, or for a reduced early pension at the age of 55, has been affected in any way by the signing of the MAS. Accordingly, in the absence of any exceptional circumstances in this case, the Bank's preliminary objection is upheld as it relates to the timeliness of the Applicant's claims regarding her pension.

28. At the same time, the Tribunal considers that settlement agreements presented by the Bank to staff members could be more explicit regarding their impact on the retirement benefits of staff members signing such agreements, thereby leaving no doubt that staff members are on notice of important consequences that may not otherwise be apparent on the face of the agreement. Non-disclosure could be considered actionable in certain circumstances.

DECISION

The Application is inadmissible.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 27 June 2012