

Decision No. 229

Lenore Beacham,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on December 15, 1999, by Lenore Beacham 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, Thio Su Mien (a Vice President of the Tribunal) and A. Kamal Abul-Magd, Judges. The usual exchange of pleadings took place and the case was listed on June 13, 2000.
2. This case concerns a claim by the Applicant that the Bank's failure to revise the date of her termination of employment to make her eligible for the benefits of the Bank's Retiree Medical Insurance Plan (MIP) amounted to a breach of her terms of appointment, and a failure to treat her fairly in the same manner the Bank treated other staff members whose positions were declared redundant.
3. The Applicant joined the Bank in September 1975 as a Secretary, level D. She worked in various departments and received several promotions during the course of her career. In April 1990, she commenced an assignment as a level 19 Budget Officer in the Agriculture and Rural Development Department (AGR), Office of the Director (AGRDR) and she was promoted to level 20 in January 1991.
4. In June 1994, the Applicant submitted a request to the Director of AGR for an extended parental leave period with a re-entry guarantee from AGRDR. She was anticipating taking maternity leave from September through November of 1994, a period of accrued annual leave from December 1994 through mid-February 1995, and an additional period of leave without pay from February 1995 through mid-September 1995, with a re-entry guarantee for September 1995. In a memorandum dated June 27, 1994, the Director of AGR indicated his support for the Applicant's request.
5. The Applicant's request for leave without pay was approved by the Bank and the Applicant commenced her parental leave period in September 1994.
6. That same month, a new Director of AGR replaced the Director who had approved the Applicant's request for leave. Upon his arrival in the Department, he was informed that budget cuts would require staffing adjustments in FY95. By the spring of 1995, the Departmental Management Team determined that one of the two Budget Officer positions would have to be declared redundant and the Applicant's position was selected for redundancy. The Applicant's new Director testified before the Appeals Committee that the Applicant's performance was not at issue and that he was well aware of her reputation for competence and good work.
7. By a memorandum dated July 3, 1995, the Applicant was informed that her employment would become redundant effective September 19, 1995, the same date on which the Applicant was to return to service following her parental leave period. On September 19, 1995, the Applicant was provided with the terms and conditions of her redundancy. She was advised that she was to remain in "regular and pay status" through May 18, 1996, after which time she would be placed on special leave through April 3, 1998, which would become the effective date for the termination of her employment. She was also advised that she would receive the standard lump sum payment in respect of her accumulated annual leave up to a maximum of 60 days on April

3, 1998.

8. By the fall of 1997, the Applicant became concerned about the “inequitable circumstances” surrounding her redundancy and, in particular, the “lack of any medical insurance with [her] Bank pension.” The Applicant met with the Ombudsman regarding those concerns in September 1997.

9. In a memorandum dated February 25, 1998 to the Vice President of Human Resources and the Deputy Vice President of Human Resources, the Applicant requested an extension of her termination date for visa status purposes and in order to make her eligible for deferred retiree medical insurance under the new human resources reforms then being proposed.

10. By a letter dated May 8, 1998, the Deputy Vice President of Human Resources denied the Applicant's request, stating that the process by which the Applicant was made redundant was proper and that he found no evidence that the Applicant had been treated unfairly on account of her maternity leave.

11. In a note dated May 18, 1998, the Applicant requested a meeting with the Deputy Vice President of Human Resources, expressing the view that he had not responded to her principal concern, namely, her eligibility for Retiree MIP benefits. She stated her understanding that the timing of termination for staff was frequently made so as to bridge staff to eligibility for Retiree MIP benefits, and that she had been informed by the Manager, Human Resources Service Center, that her projected termination date was just 12 days short of the effective date of the MIP Rule of 60. She added that she was not in any way requesting to qualify for the Rule of 50 unreduced pension.

12. On May 26, 1998, the Applicant met with the Deputy Vice President of Human Resources who, according to the Applicant, encouraged her to take the matter to the Appeals Committee, adding that he would consider separately a request by the Applicant to use two weeks' accrued annual leave to bridge her to eligibility for the Retiree MIP.

13. On June 3, 1998, the Applicant made a request for administrative review of the Deputy Vice President's decision of May 8, 1998 denying her an extension of her termination date and, consequently, eligibility for Retiree MIP benefits.

14. On July 9, 1998, the Manager, Human Resources Service Center, responded to the Applicant's request for administrative review. He informed the Applicant that her termination date would not be changed and that she would not be “bridged” so as to make her eligible for the Retiree MIP because her separation date was established by the events surrounding her redundancy and because the time in which to review the decision which established her termination date had long since lapsed.

15. On August 17, 1998, the Applicant made a second request for administrative review in which she explained that her first request for administrative review was incorrectly referred to as a request for review of the redundancy decision. She explained that she was requesting review only of the May 8, 1998 decision denying her the extension of her termination date which would bridge her to the “Rule of 60/retiree medical insurance.” She stated that “the extension would be at no additional cost to the Bank since only accrued annual leave needs to be utilized.”

16. Again, on August 26, 1998, the Applicant wrote to the Manager, Human Resources Service Center, reiterating her disappointment with the July 9, 1998 administrative review. She stated that she was asking only that, at a minimum, she be granted the use of two weeks of her accrued annual leave to precede her special leave period so as to extend her termination date from April 3 to April 17, 1998 which would make her eligible for the “Rule of 60” but not the Rule of 50 unreduced pension.

17. On September 11, 1998, the Applicant filed a Statement of Appeal with the Appeals Committee. In her appeal, she challenged the denial of her request for the extension of her termination date.

18. In a report dated June 9, 1999, the Appeals Committee recommended that (i) the Applicant's termination date be revised retroactively, so as to make her eligible for the Retiree MIP benefits that took effect on April 15, 1998, and (ii) the Applicant be reimbursed for attorney's fees incurred in connection with the subject matter of her appeal, through the date of the hearing, up to a maximum of \$5,000.

19. By a letter dated September 14, 1999, the Managing Director informed the Applicant that the Respondent had decided to make her eligible to participate in the Retiree MIP according to the terms of the Plan as if she had terminated on April 15, 1998, and that the Respondent would reimburse her legal fees in the amount of \$4,812.10, the amount she had requested in a statement of costs submitted by her.

20. By a letter dated November 15, 1999 to the Managing Director the Applicant requested a reconsideration of the decision. She claimed:

If my effective termination date were to remain April 4 [sic], 1998 I am a class of one, and this exception [would be] recorded as a footnote to, or totally outside, the relevant databases. This will certainly cause administrative nightmares, for instance, when there is a change in staff, medical plan, or the Bank's computer systems. Such problems would be especially difficult to manage in my retirement years and placing this burden, unnecessarily, on a retiree is unfair.

21. The Applicant further requested reimbursement for additional costs related to her appeal in the amount of \$5,946.50 for which she attached an additional statement.

22. By a letter dated November 18, 1999, the Managing Director assured the Applicant that the decision concerning her eligibility to participate in the Retiree MIP was duly incorporated in the Bank's records and that she would have access to retiree medical insurance under the same conditions as would apply if her separation date had been revised to a date after April 15, 1998. He further stated that, as the relief requested had been granted and given his belief that he had "followed very closely the spirit of the Committee's recommendation," he would not adjust her termination date. With regard to costs, the Managing Director indicated that he had previously accepted the Appeals Committee recommendation that the Applicant be reimbursed for attorney's fees up to \$5,000 and that he found no basis for awarding an additional payment.

23. On December 15, 1999, the Applicant submitted her Application to the Tribunal, challenging the Bank's decision not to revise her separation date from April 3, 1998 to April 15, 1998 or some date thereafter, as well as the decision to reimburse her only for her legal fees and not the additional costs claimed by her.

24. In its Answer to the Application, the Respondent raises two jurisdictional issues that the Tribunal must resolve before addressing the merits of the Application.

25. The Respondent claims that it did not breach the Applicant's terms of appointment and that, consequently, the Tribunal may refuse to accept jurisdiction under Article II(1) of its Statute. The Tribunal cannot accept this line of reasoning. It cannot decline jurisdiction on the basis of an assumption by the Respondent that it did not violate the Applicant's terms of appointment. The mere allegation by the Applicant that her terms of appointment were violated by the Bank renders the Application admissible under Article II of the Statute of the Tribunal. In McKinney, Decision No. 183 [1997], paras. 13 and 17, the Tribunal held:

The Tribunal's jurisdiction in this case turns, therefore, upon whether the Applicant has 'alleged' a plausible claim of contract violation.

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Whether the Applicant can sustain his case is a matter to be determined at the next stage, at which the merits are addressed through the conventional exchange of pleadings. It would be premature and improper for the Tribunal, by declaring this application inadmissible on the ground of jurisdiction *ratione materiae*, to deprive the Applicant of an opportunity to make his case. The Respondent's request to do so is therefore rejected.

26. Nor does the Tribunal accept the Respondent's reasoning on the question of exhausting administrative

remedies regarding the Respondent's manner of implementing the recommendations of the Appeals Committee. The Respondent argues that its decision to provide the Applicant eligibility for the Retiree MIP without changing the date of her separation from the Bank is a decision for which the Applicant should have exhausted administrative remedies before coming to the Tribunal. The record shows that the Appeals Committee issued its recommendations on June 9, 1999, and that on September 14, 1999, the Respondent informed the Applicant that it (the Respondent) accepted said recommendations in principle. On November 15, 1999, the Applicant wrote to the Managing Director stating that "[t]here are, however, aspects of your decision that I request you to reconsider." On November 18, 1999, the Managing Director rejected the Applicant's request, stating that he saw no reason to adjust her termination date. This was in substance a reiteration of the position that the Applicant had been challenging from the outset. To require a new cycle of administrative review would indeed be unreasonable, and would serve no meaningful purpose. The Tribunal concludes that the Applicant did not fail to exhaust her internal administrative remedies.

27. Turning now to the substance of the Application, the Tribunal identifies the central complaint of the Applicant to be related to the specific means by which the Bank decided to implement the recommendations of the Appeals Committee. The Appeals Committee recommended that "Appellant's termination date should be revised retroactively, so as to make Appellant eligible for the retiree MIP that took effect on April 15, 1998." In accepting the Committee's recommendation, the Respondent, in its letter to the Applicant, dated September 14, 1999, made it clear that it accepted the recommendation only "in principle," and that, although the Applicant's termination date would remain April 3, 1998, she would be eligible to participate in the Retiree MIP. It is specifically this variation between the Appeals Committee's recommendation and the Respondent's implementation that the Applicant is complaining about.

28. The Tribunal has on many occasions explained the nature and scope of its review of management decisions on the recommendations of the Appeals Committee. As decided in Lewin, Decision No. 152 [1996], para. 45:

The Tribunal's task is to pass judgment upon whether the Bank has violated the contract of employment or terms of appointment of the Applicant. It is not to pass judgment upon whether the Bank has rightly or wrongly accepted or rejected the recommendations of the Appeals Committee. There is, consequently, nothing wrong per se in the Bank's decision not to accept the recommendations of the Appeals Committee .... this decision is to be assessed on its own merits....

Staff Rule 9.03, paragraph 9.01, provides

The Vice President, Human Resources ... will review the recommendation of the Appeals Committee and make a decision on the appeal.

Interpreting the Staff Rule, the Tribunal held in Lewin that this does not say that the Bank is under a legal obligation to accept the recommendations of the Appeals Committee. (Para. 37.) It is free to accept or reject all or part of them. (*Id.*) The decision of the Bank is a matter of managerial discretion. (*Id.*)

29. In the present case, what the Bank decided was in fact partially to accept the Appeals Committee's recommendation. The Committee recommended that the Applicant's termination date "be revised retroactively" in order to make her "eligible for the retiree MIP." The Bank accepted the latter part of the recommendation but rejected the first. This partial acceptance is not, per se, an abuse of the Bank's discretion. It is for the Applicant to substantiate the allegation of abuse.

30. The Applicant contends that in refusing to change the date of her separation from April 3 to April 15, 1998, the Bank treated her differently from other staff members whose dates of separation were changed, thus bridging them to certain benefits. This different treatment and discrimination, she asserts, constituted abuse of discretion and failure to follow proper process.

31. The Respondent denies the allegation of discrimination, insisting that it "consistently refused to extend separation dates that were dictated by the end of a Special Leave period that was the payout of severance because to do so would be unfair to staff who chose to take their severance as a lump sum" and who,

therefore, could not avail themselves of any such extension.

32. The Tribunal notes that the main source of the Applicant's complaint was her deprivation of a special treatment given to other staff members in situations similar to hers. The essential element of said special treatment was to bridge the staff member to a benefit that could not be afforded without such bridging. In the present case, the Respondent extended to the Applicant in substance the same favorable treatment, namely, allowing her to get the benefit of the Retiree MIP. The fact that the Bank made such benefit available to the Applicant without, however, changing her date of separation does not constitute, in the view of the Tribunal, discriminatory treatment amounting to abuse of discretion. It is for the Bank, so long as it acts without arbitrariness or discrimination, to choose a specific manner of fulfilling its obligation under the contract of employment and the Bank's laws governing the treatment of its employees. Moreover, in the case of the Applicant, the Bank made a clear undertaking and gave written assurances enabling the Applicant to use the benefits of the Retiree MIP. The Applicant's concerns about confusion and difficulties arising from the failure to change the effective date of her termination to April 15, 1998 are merely speculative. In the light of the above, the Tribunal concludes that the Respondent's decision to give the Applicant the benefit of the Retiree MIP but in a manner other than the one requested by the Applicant does not constitute an abuse of discretion.

### **Decision**

For the above reasons, the Tribunal unanimously decides to dismiss the application.

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Robert A. Gorman  
President

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Nassib G. Ziadé  
Executive Secretary

At Washington, D.C., November 10, 2000