

Decision No. 137

Luis E. Bori,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of A.K. Abul-Magd, President, E. Lauterpacht and R.A. Gorman, Vice Presidents, and F.K. Apaloo, F. Orrego Vicuña, Tun M. Suffian and P. Weil, Judges, has been seized of an application, received March 25, 1993 by Luis Bori against the International Bank for Reconstruction and Development. The Respondent filed requests, which were granted, to separate the jurisdictional issues from the merits and to file an answer limited to the jurisdictional issues. Thereafter the usual pleadings were exchanged on the jurisdictional issues. The case was listed on March 1, 1994.

The relevant facts:

2. The Applicant had been in the service of the Respondent since November 24, 1968. At the time of the filing of the application, the Applicant was a Records Management Assistant at level 15.

3. In 1983 the Applicant was an Information Center Supervisor for Latin America, Level 19, in the Bank's Information, Technology and Facilities Department (ITF). By memorandum dated March 28, 1983, to the Chief, Information Centers Section, Administration Department (ICS/ADM), the Applicant requested a work plan of the major areas of responsibility and a description of his upcoming assignments as a member of the Information Centers Section (ICS) Management Team. A copy of this memorandum was given to the Division Chief, Records Management Division (RMD). By memorandum, dated May 6, 1983, the Assistant Director, ADM, informed the Applicant that he had two choices; he could either join the ICS Management Team starting Monday, December 5, 1983 for a period of six months, or he could be assigned for a period of six months to a new Records Assistant position where his expertise in support of a Records Officer would be put to use; at the end of either assignment the Applicant would either return to his current position or to another assignment depending on the circumstances at the time. The Assistant Director also stated that he could not reconcile further his concerns for the Applicant, as an employee, with his concerns for the Records Management Division as a whole. The Applicant was given until May 13, 1983, to make a decision.

4. By memorandum, dated October 11, 1983, sent to the Vice President, Personnel (VPA), the Ombudsman, among other things, praised the good record of the Applicant with the Bank and his qualities of self-discipline and professionalism and recommended that the Applicant be allowed to remain in the Latin America & Caribbean Information Center (LACIC) to complete the implementation of the New Records Management System.

5. Also by memorandum, dated October 28, 1983, sent to the Assistant Director, ADM, the Ombudsman recommended that the Applicant be allowed to remain in the LACIC, to complete the implementation of the New Records Management System. By memorandum, dated November 23, 1983, the Assistant Director, ADM, communicated to the new Ombudsman, his rejection of his predecessor's recommendation. He also stated that he proposed to transfer the Applicant to the Front Office of ICS.

6. By memorandum, dated January 19, 1984, to the Section Chief, Administration Department Information Centers Section (ADMIC), the Chief, Documentation Systems Section expressed his satisfaction with the Records Document Cataloging System and nominated another staff member as the coordinator of division

cataloging standardization. He suggested that the Applicant and the new LACIC Supervisor coordinate with this staff member.

7. By memorandum, dated August 7, 1984, to the Acting Chief, ICS/ADM, the Applicant expressed his concern at not having received approval of his leave request submitted on July 17.

8. In late 1984, the Applicant received a copy of his Annual Evaluation Review (AER) covering his performance between November 1982 and October 1983. In it he was praised by his Section Chief for his acquisition of excellent office space for the LACIC and the development of a totally new document processing system but was heavily criticized for his lack of managerial ability, lack of teamwork and "maverick tendencies". The Division Chief and the Assistant Director agreed with this evaluation.

9. By memorandum, dated December 10, 1985, to the Applicant, the Division Chief, Administration Department, Records Management Division (ADMRM), giving reasons, notified the Applicant of his transfer and of the transfer of his position from ICS to the Records Review Unit (RRU), effective December 20, 1985. He was also notified that the title of his position would be Records Management Assistant, but that it would be changed to Records Management Analyst, while his grade would remain 19.

10. During the 1987 Reorganization, the Applicant was not initially selected. He refused to accept the Enhanced Separation Package and to leave the service of the Bank. Finally he was offered a position as Senior Documentation Assistant in the General Services Department (GSD) at level 16. By memorandum, dated October 15, 1987, to the Vice President, Personnel (VPPER), the Applicant thanked him for having helped to find a job in GSD, but expressed his concern that his new position had been graded three levels below his current level.

11. On August 1, 1990, the Applicant's position in GSD was regraded at level 15. His title now was Records Management Assistant.

12. By memorandum, dated October 10, 1990, to the Ombudsman, the Applicant requested administrative review of his case that dated back to 1983, in which he alleged that he had been falsely accused of misconduct by his supervisors and their superiors and even in October 1990 was suffering from the consequences of that case. He mentioned that he had requested a meeting with the new Vice President, Personnel, but was told that the latter's involvement was not permitted because of conflict of interest. The Applicant acknowledged that he had been advised that the time limitation on his case had expired and the only recourse at that time would be through the office of the Ombudsman.

13. By memorandum, dated December 10, 1991, to the new Ombudsman, the Applicant informed her that he had met with her predecessor and had given him a condensed copy of a statement describing his case but had not received an answer from him. He mentioned that he was attaching a copy of the statement of his case and requested her to review it.

14. The Applicant filed an appeal with the Appeals Committee on November 3, 1992 relating to the controversy arising from the preparation and distribution of a memorandum written by the Applicant (the "memo controversy"). On January 6, 1993, the Appeals Committee issued a decision concluding that it had no jurisdiction to hear the Applicant's appeal. It found that the Applicant could have prepared a request for administrative review of the decisions to which he objected and thereafter filed a timely appeal before the Appeals Committee, which he did not do, and that the Respondent had not prevented the Applicant from taking these actions. The Appeals Committee also found that a waiver of time limits could not be recommended.

#### The Respondent's main contentions on the jurisdictional issue:

15. The Applicant failed to exhaust internal remedies on a timely basis for all of his claims. If the Applicant had resorted to internal remedies, his allegation of bias arising from the memo controversy could have been explored.

16. The Respondent did not prevent Applicant's pursuit of his internal remedies.

17. The admissibility of his application does not turn on whether the Applicant knew of the internal remedies available to him.

18. By choosing to seek informal remedies without asserting his right to pursue a formal grievance, the Applicant waived, in effect, his appeal rights.

19. The Applicant has not demonstrated that there were any exceptional circumstances to bring the application within the Tribunal's jurisdiction notwithstanding that he had not exhausted his internal remedies in time.

The Applicant's main contentions on the jurisdictional issue:

20. The reference of the case back and forth from the Ombudsman to the management and vice versa was designed to confuse the Applicant and to impede his ability to follow a coherent sequence of events and prepare and present his case. The management at all levels ignored Applicant's pleas, hoping that using delaying tactics would eventually work against the Applicant's ability to present a clear, convincing and successful case in any legal forum.

21. Applicant thought he should file an appeal relating to all the actions of management against him at the time at which he filed an appeal relating to the memo controversy and the consequences stemming from it.

22. The charges against the Applicant were never put in writing, nor was there any decision in connection with the memo controversy. Therefore the Applicant could not contest such decisions through a request for an administrative review or an appeal.

23. The Applicant had never claimed ignorance of the rules concerning the pursuit of grievances or lack of awareness of the requisite actions that must precede filing an appeal. He had exhausted all recourse in order to obtain a management decision resolving the memo controversy, but such a decision was never forthcoming.

Considerations:

24. The Applicant was employed by the Bank in November 1968. By 1983, he had risen to the post of Information Center Supervisor level 19 in ITF. At that time, there was a need to improve the system of storage of documents in the Information Center. The Applicant, with the approval of his supervisor, prepared a memorandum on that subject. Although the Applicant believed that the memorandum did not find favor with his supervisors, they sought to dispel those suspicions and wrote to reassure him. This assurance notwithstanding, the Applicant felt that his memorandum was the main reason for the career reverses he suffered in the Bank.

25. The Applicant was reassigned to the position of Records Management Assistant in the same department in 1986 at the same level as in his former position, namely level 19. In 1987, a Bank-wide Reorganization took place, in which the Applicant was selected in round two for the position of Senior Documentation Assistant at level 16. He was presented with the choice of accepting this lower-graded position or separating from the Bank with the Enhanced Separation Package (Package B). The Applicant chose to do the former. In August 1990, his position was downgraded to level 15. Although, had he been so minded, the Applicant could have sought to have his downgrading reviewed by an appeal to the Job Evaluation Unit, he failed to do so.

26. By an application dated November 1992, the Applicant presented to the Appeals Committee his grievances with respect both to the transfer of position resulting from the 1987 Reorganization and to the 1990 downgrading of his position. The Appeals Committee declined jurisdiction because of the untimeliness of his appeal.

27. In March 1993, the Applicant filed an application with the Tribunal. He challenges the same decisions of the

Bank which he had presented to the Appeals Committee.

28. The Bank's responses to the Applicant's contentions are broadly two, namely, that some of the remedies sought do not fall within the Staff Rules of the Bank and, as to those complaints in respect of which relief can properly be granted, the Applicant failed to exhaust the internal remedies within the Bank as required by Article II, paragraph 2, of the Statute of the Tribunal by not seeking timely administrative review.

29. The Applicant has no convincing answer to the Bank's contentions. Indeed, he admits his failure to exhaust internal remedies and excuses himself on the ground that the "memorandum controversy" has not been resolved. Article II, paragraph 2(i), of the Statute of the Administrative Tribunal provides, in part:

No .... application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless .... the applicant has exhausted all other remedies available within the Bank Group....

Staff Rule 9.01, paragraph 2.01 provides that staff members requesting administrative review must do so no later than ninety calendar days after being notified of the administrative decision being challenged.

30. As the Tribunal has decided in Romain, Decision No. 136 [1994], paragraph 27:

The Tribunal has consistently held that an Applicant's failure to invoke in a timely manner the internal procedures for administrative review within the Bank constitutes a failure to "exhaust all other remedies available" that, in turn, results in his application being inadmissible before the Tribunal by virtue of Article II, paragraph 2(i), of the Statute: Steinke, Decision No. 79 [1989]; de Jong, Decision No. 89 [1990]. As recently as Setia, Decision No. 134 [1993], paragraph 23, the Tribunal has reiterated:

[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....

31. The Tribunal finds that the Applicant is seeking to contest action allegedly taken against him in the period 1983 to 1990, but that he failed to invoke the procedure for administrative review until his appeal to the Appeals Committee on November 3, 1992. His application is, therefore, not admissible under the Statute of the Tribunal for failure to exhaust his internal remedies in time. The Applicant has presented no "exceptional circumstances" that would justify any relief from this requirement of the Statute.

#### Decision:

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

A. K. Abul-Magd

/S/ A. K. Abul-Magd  
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe  
Executive Secretary

At London, June 24, 1994