

Decision No. 212

Sylvie M. Brebion (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents, and A. Kamal Abul-Magd, Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on October 22, 1998, by Sylvie M. Brebion against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on June 7, 1999.

Subject matter of the application

2. This case concerns a complaint by the Applicant regarding a decision of the Bank refusing her request to exercise the option for early retirement under the Rule of 50. The Applicant argues that the Rule of 50 violates the Principles of Staff Employment and amounts to a *détournement de pouvoir* and *de procédure*, particularly because Staff Retirement Plan (SRP) assets would be used for purposes other than the payment of retirement benefits and the end result would be a discriminatory and arbitrary policy towards different groups of staff members. The decision of the Bank is also contested on the basis of abuse of discretion, violation of essential terms and conditions of employment and the adverse financial implications that the policy relating to the Rule of 50 would have on the Staff Retirement Fund (the "Fund").

The Applicant's career in the Bank

3. The Applicant joined the Bank in 1975 as a regular staff member. The position she occupied was subsequently abolished in 1989 and she agreed at the time to a separation package which, among other elements, included that she could continue to work for the Bank as a consultant with no limitation on the number of days she could be employed. When limits were introduced in 1994 on the number of days that consultants could be employed, the Applicant brought a first case to the Tribunal opposing the application of those limits to her specific situation. The Tribunal found in her favor in Brebion (Decision No. 159 [1997]). In view of the revision to the SRP effective April 15, 1998, and the introduction of a new benefit relating to early retirement under the Rule of 50, the Applicant requested that she be allowed to exercise this option on the basis of having contributed to the SRP during 14 years. This request was refused by the Bank on the ground that the Applicant had not been in the service of the Bank on April 14, 1998, as mandated by the Rule. It is against this last decision that the Applicant comes now to the Tribunal.

Different petitions to the Tribunal

4. The application was brought to the Tribunal before this body rendered its decision in Crevier (Decision No. 205 [1999]). It is therefore understandable that the Applicant has raised a number of issues that were in the meantime disposed of in Crevier. However, a number of new aspects have also been raised, either in connection with policy questions, with the legal powers of the Executive Directors, or with respect to the specific situation of the Applicant. Similarly, while the Applicant requested in her application that she be allowed to exercise the option of receiving an unreduced early retirement pension under the Rule of 50, in her reply she requested instead that the Rule of 50 be rescinded. In both pleadings she requests, in the alternative, that the Bank be ordered to contribute to the Fund an amount equivalent to the additional cost of the implementation of

the Rule of 50. The Tribunal will address these various aspects separately.

The Applicant's pension entitlement

5. The Tribunal must first examine the specific circumstances of the Applicant in relation to her pension entitlement. As noted above, the Applicant requested in her application that the Bank be directed to allow her to exercise the option of receiving an unreduced pension under the Rule of 50. It is quite evident, however, that the Applicant does not meet the requirements of Section 3.3 of the SRP in connection with the Rule of 50. First and foremost, she was not in the service of the Bank on April 14, 1998, but had left nine years earlier. Whatever might have been the reasons for her separation, the fact is that the Applicant was not in the service of the Bank on the critical date provided in Section 3.3. The policy pursued by the Rule of 50, among other objectives, aims at providing incentives for early retirement of staff members. The Applicant's departure, a long time before the date of entry into force of the amendments, does not advance this policy objective. Second, the separation package agreed with the Bank included a severance payment, an element which disqualifies staff members from opting for the Rule of 50. As explained in Crevier, this last requirement is not incompatible with the pension system and seeks to avoid the problem of "double dipping."

6. The Applicant's pension entitlement was established at the time of her separation in 1989. Accordingly, she has a right to a deferred pension based on her 14 years of service and contributions. This pension could commence either at the normal age of 62, without reduction, or with the appropriate actuarial reductions at or after age 55. This right remains unaffected by the amendments to the SRP and the amount of the pension shall be exactly the same as if the amendments had not been introduced. It follows that the Applicant derives no direct or indirect harm from the implementation of the Rule of 50.

Policy objections regarding the Rule of 50

7. In both the application and the reply, the Applicant has raised certain objections to the policy underlying the Rule of 50 and related amendments. The relationship between this Rule and the general pension and staff policy of the Bank was discussed by the Tribunal at length in Crevier. It was there concluded that the adoption of the Rule of 50 did not violate the Principles of Staff Employment, as the severance and pension policies of the Bank are complementary aspects of the overall compensation and employment policy of the institution. It followed that the linkage between these aspects could not be considered to violate the essential terms and conditions of employment of staff members. It was also concluded that SRP assets are not being used under the Rule of 50 for purposes different from the payment of pensions and retirement benefits, and that any reduction in the Bank's administrative expenses is purely incidental. Neither was it found that the integrity of the management of the Fund is compromised in any way by the new benefits introduced. On the basis of these and other arguments, the allegation of *détournement de pouvoir* and *de procédure* could not then and cannot now be sustained in the context of the introduction and implementation of the Rule of 50.

8. The Tribunal also considered in Crevier the question of eventual discrimination among staff members with respect to their entitlement to the Rule of 50. Again on this point it was found that there were no bases to sustain this argument as it is inherent to a pension plan that staff in different situations will be treated differently. In this connection, it is quite evident that staff members who have left the service of the Bank need not be treated the same as staff who are still in service on a given date. In part, this is because, as already noted, staff who have left the Bank do not need an incentive for early retirement, as the Respondent argues. More generally, it is simply because equality of treatment is not required when the circumstances of different groups of staff members are different, such that their equal treatment could be unreasonable.

9. It is also important to keep in mind in the context of this case, as well as in Crevier, that what the Bank has done in establishing the Rule of 50 is to create a new benefit for staff members who wish to take early retirement and that in so doing, it has carefully and deliberately preserved acquired rights and other preexisting benefits. This being a new benefit, it has its own requirements and conditions and is available to all those staff members who qualify. Those who do not qualify will retain, unaffected, their respective entitlements under the terms of the SRP.

Financial implications of the Rule of 50

10. The Applicant has also made several arguments relating to the financial implications of the Rule of 50 on the SRP. It has been argued in particular that the Bank has not made contributions to the Fund since 1997 and that, consequently, the enhanced benefits available under the Rule of 50 will be financed by staff contributions and returns on investments from past contributions, which include those of the Applicant while she was a contributing staff member. In the Applicant's view, these enhanced benefits result in diminishing the total capital available under the SRP and, furthermore, result in placing any risk for poor performance of the SRP on the participants. It is the Applicant's position that this situation amounts to discrimination against former staff members in that such staff members will see their pensions devalued and their risks increased in order to finance the benefits available to those other staff members qualifying under the Rule of 50.

11. The Applicant's arguments involve two different elements. First, there is the question whether her pension will be devalued as a consequence of the implementation of the Rule of 50. As the Tribunal had the occasion to explain in Crevier, under the pension system of the Bank in force until 1998 the amount of a pension did not depend on the capital accumulation of a staff member's account nor, for that matter, on the growth or decline of the Fund's assets. A pension was based solely on the number of years a staff member had contributed to the Fund, the level of salary and other factors specified in the SRP. It is precisely one of the principal objectives of the Human Resources Policy Reform to provide for pensions that at least in part will be based on capital accumulation and thus facilitate the mobility of staff members. The Applicant's pension entitlement does not in any way change as a consequence of the Rule of 50. As noted above, she will not lose whatever amount of pension she accumulated before the amendment of the SRP.

12. The second element of the Applicant's financial arguments relates to the financing of the SRP. While it is true that the Bank does not have to contribute to the Fund when investment performance is sufficient to cover the benefits – as has happened in the past few years – the situation is completely different in the opposite scenario, that is, when the income of the Fund is insufficient to provide for the benefits under the SRP. In such case, financial risk falls upon the Bank and not upon the staff members as contended by the Applicant. Consequently, the Bank would be under an obligation to provide the necessary financing in this situation.

13. It is not for the Tribunal to make actuarial estimates about the likely situation of the Fund in connection with the Rule of 50. The Executive Directors had before them actuarial reports that pointed towards reasonable financial stability of the Fund. Indeed, it was concluded that the Rule of 50 would not be more costly to the SRP and that it could even result in a net reduction of the SRP's liabilities, because even if enhanced benefits cost "slightly more" the savings from staff leaving earlier would offset such cost.

Rescission of the Rule of 50 is unwarranted

14. Based on her objections to the policy underlying the Rule of 50, the Applicant requested in her reply the rescission of this Rule. The considerations set out above, however, in conjunction with those made by the Tribunal in Crevier, do not warrant granting this request as the policy pursued by the Bank is legitimate. The Applicant has also stated that in any event she would not withdraw pension benefits until age 55. However, this decision does not alter her non-entitlement to a Rule of 50 pension, on the one hand, nor her right to a deferred pension at age 55, on the other.

Compensation of the Fund is also unwarranted

15. The Applicant petitions the Tribunal in the alternative to order the Bank to compensate the Fund in an amount equal to the cost incurred by providing the new benefits under the Rule of 50, or, as she says in her reply, that the Bank "make up the difference in the capital of [the] fund that will be lost as a result of the Rule of 50." In the light of the above considerations, however, this request is unwarranted.

Administrative powers of the Executive Directors

16. The Applicant has also objected to the procedure that was followed in amending the SRP. In her view, such amendments had to be submitted to the Board of Governors for endorsement under Section 15 of the By-Laws of the Bank, a requirement, she says, that was omitted by the Executive Directors. In the Respondent's view, such requirement applies only to general rules of procedure governing the operations and proceedings of the Executive Directors but does not extend to the Executive Directors' numerous operational and administrative decisions, including those concerning the SRP. The Bank further argues that certain of the amendments were in any event submitted to the Board of Governors for approval insofar as they changed pension benefits available to the Executive Directors, a step that was specifically required by Resolution 337 of the Board of Governors.

17. The Tribunal endorses in this respect the Respondent's views. It notes that Section 15 of the By-Laws does not require that every kind of decision be submitted to the Board of Governors for review, and the practice of the Bank confirms this interpretation. Indeed, this practice evidences that operational and administrative decisions made by the Executive Directors are not normally submitted to the Board of Governors, amendment of the SRP being one such type of administrative decision. Moreover, the Board of Governors had an opportunity to discuss the new policy when the amendments to the Executive Directors' pension benefits were submitted to it for approval. This is the objective of any review by the Board of Governors.

Notification to concerned staff

18. Questions relating to the lack of notification of the new policy have also been raised by the Applicant. However, as the Respondent has explained, such notifications are only made to former or retired staff members who might be affected by the amendments, which is not the situation in the present case.

Decision

For the above reasons, the Tribunal unanimously decides to dismiss the Applicant's claims.

Robert A. Gorman

President

Nassib G. Ziadé

Executive Secretary

At Washington, D.C., October 1, 1999