

Decision No. 129

Thomas J. Bredero,
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 July 20, 1992 by Thomas J. Bredero against the International Bank for Reconstruction and Development. The Respondent filed requests, which were granted, to separate 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, but the Applicant did not exercise his right to reply to the Rejoinder. The case was listed on September 9, 1993.

The relevant facts:

2. The Applicant, a Dutch national, joined the Bank in July 1979 as an agriculturist. Effective November 30, 1991 the Applicant resigned from his field assignment to the Bank's Resident Mission in Antananarivo, Madagascar, and took early retirement from the Bank.

3. On November 26, 1991 the Applicant filled out a Relocation Travel Request form in order to apply for certain resettlement and separation benefits. He stated in that form that he was going to resettle in the Netherlands.

4. By fax, dated December 23, 1991, the Applicant requested the Accounting Department to pay him immediately \$50,000 of his termination benefits and to withhold \$10,000 pending the resolution of some disputed outstanding claims he had with the Bank.

5. By letter, dated December 30, 1991, the Payroll Section sent to the Applicant a check in the amount of \$28,877.77 representing his termination benefits after deduction of both the Applicant's outstanding debts to the Bank and the \$10,000 that he had requested to be withheld until settlement of the disputed claims.

6. By letter, dated January 2, 1992 the Applicant's attorney wrote to the Resident Representative in Antananarivo to inform him that his client had decided to remain in Madagascar after his retirement, and that his client did not have to vacate the house in which he was living since the house was leased in his client's name.

7. By memorandum, dated January 10, 1992, the Benefits Counselor (BC) informed the Applicant that since he had not resettled in the Netherlands, he had to refund to the Bank a total of \$19,120.66 representing the resettlement benefits he had already received.

8. By letter, dated February 14, 1992, sent to the Applicant's address in the Netherlands, the Senior Pension Administration Officer (SPAO) informed the Applicant that his department had received the documents the Applicant had sent the SPAO evidencing the Applicant's resettlement in the Netherlands, and that his election to receive his pension in Netherlands guilders had been approved.

9. By letter, dated February 20, 1992, sent to the Applicant's address in the Netherlands, the BC reminded him that, unless he actually resettled in the Netherlands, he would have to refund to the Bank the \$19,120.66

representing resettlement benefits he had already received.

10. By letter, dated March 14, 1992, and addressed, among others, to the BC and the Executive Secretary of the Tribunal, the Applicant stated that he had decided early in January 1992 to resettle officially in the Netherlands "in spite of my current personal interests in Madagascar". Furthermore, he requested, inter alia, that the Bank refund to him the \$10,000 withheld and that the shipping company in Madagascar be instructed to ship the Applicant's personal effects to the Netherlands. Then, by letter, dated April 23, 1992, to the BC, the Applicant reiterated the same requests and concluded stating that non-compliance with his requests would result in legal action against the World Bank.

11. By letter, dated July 5, 1992, to the Tribunal, the Applicant stated that he was filing a formal complaint against the Benefits Department for withholding \$10,000 from his retirement benefits and for failing to recognize that the Applicant had chosen the Netherlands to be the country of his resettlement after his retirement from the Bank. By letter dated July 23, 1992, the Executive Secretary of the Tribunal returned to the Applicant his letter of July 5, 1992 with attachments, and advised him to make the necessary corrections and return the corrected application and the eight copies to the Secretariat of the Tribunal by August 31, 1992.

The Respondent's main contentions on the jurisdictional issues:

12. The application is inadmissible because the Applicant failed to exhaust in a timely manner the administrative remedies available to him, before submitting his application to the Tribunal. The Applicant failed to request from the Director, Personnel Management Department, an administrative review of the Respondent's decision dated February 20, 1992, which the Applicant contested. Similarly, the Applicant failed to file an appeal with the Appeals Committee. The Applicant's letter dated March 14, 1992, was directed to ten different people in different departments and consisted of a multitude of grievances.

13. Assuming arguendo that the Applicant properly requested an administrative review, after the Respondent failed to issue a decision on the administrative review within 30 days, the Applicant should have filed an appeal with the Appeals Committee, but he did not do so. Rather, the Applicant decided to proceed directly to the Tribunal.

14. The Applicant failed to demonstrate that there were exceptional circumstances which prevented him from pursuing on a timely basis the Bank's internal remedies.

The Applicant's main contentions on the jurisdictional issues:

15. The Applicant after his retirement from the Bank did everything possible within the administrative and departmental hierarchy that was accessible to him for his case. No other action was available to him but to bring a complaint before the Tribunal.

16. The Africa 3 Department chose to ignore the Applicant's pleas and did not respond.

17. The Applicant informed several Bank officers on March 14, 1992 that he had decided to resettle officially in the Netherlands in spite of his current personal interests in Madagascar.

Considerations:

18. The Applicant was employed by the Bank as an Agriculturist on July 27, 1979. He retired from the Bank on November 30, 1991. His last assignment with the Bank was Senior Agriculturist in the Resident Mission, Antananarivo, Madagascar.

19. Under the Staff Rules, the Applicant on separation from the Bank was entitled to certain benefits designed to assist in his relocation. Upon his retirement, differences arose between himself and the Benefits Department of the Bank as to his true entitlement. The Respondent retained a sum of \$10,000 to offset debts due from him

to the Bank. These differences were unresolved. The decision to deny him the benefits he claimed was communicated to him on February 12, 1992. It is that decision that he contests by this application.

20. The Respondent's position is that the application is not properly before the Tribunal because in bringing it the Applicant failed to exhaust the Bank's internal remedies laid down by paragraph 2 of Article II of the Tribunal's Statute. The Respondent points out that under the Statute the Applicant could validly have prosecuted his grievance directly before the Tribunal without exhausting its internal remedies, only if both he and the Respondent agreed to this course. The Bank said it had not agreed to any such course.

21. In particular the Bank points out that the Applicant has not, conformably with the Statute, requested administrative review of the decision he contests. The Bank says, in this case, the Applicant could have validly sought an administrative review of the decision only if he had addressed a letter to the Director of Personnel Management within ninety days of the decision seeking such review.

22. It seems clear that, although the Applicant wrote a number of letters to the Bank, none of these in terms, or intent, sought administrative review. Had the Applicant unsuccessfully sought administrative review, his next step, if he was to exhaust the Bank's internal remedies, would have been to file an appeal with the Appeals Committee. He did not reach that stage.

23. The Applicant's reply to the Respondent's contention that he had failed to exhaust the Bank's internal administrative remedies is none too clear. He says he has "done everything possible within the World Bank administrative and departmental hierarchy". That is not an answer to the jurisdictional issue raised by the Bank. The issue simply is, whether or not he exhausted the Bank's administrative remedies which were open to him. It is plain he has not done so and is now out of time to do so. Whether the Applicant was ignorant of these remedies is immaterial; ignorance of the law is no excuse: see Novak, Decision No. 8 [1982].

Decision:

The Tribunal therefore 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 Washington, D.C., December 10, 1993